THE NEGOTIABLE INSTRUMENTS ACT

WITH

INTRODUCTION, FULL COMMENTARIES
AND ENGLISH AND INDIAN CASES NOTED UP-TO-DATE

Books Checked

BY

K. BHASHYAM, B.A., B.L.,

AND

K. Y. ADIGA, B.A., B.L.,

ADVOCATES, HIGH COURT.

FIFTH EDITION, REVISED & ENLARGED.

PUBLISHERS:

EASTERN LAW HOUSE, CALCUTTA.

1933.

FOREWORD

I WAS first amused when my friend and fellow-toiler Srijut K. Bhashyam suggested that he should take a foreword from me for his book on Negotiable Instruments. But thinking it over, I saw nothing more absurd in it than in any other foreword.

If an equal distribution of the necessary things needed for Life and Progress is not possible, an easy machinery of credit should be the aim of all builders of nations as a second best. A properly framed law of Negotiable Instruments and a thorough knowledge of that law on the part of the people are essentials for national progress and welfare in modern times more than even a well-administered Penal Code. A good and well-understood law of bills and notes is no less important than a good currency. I hope that the latest edition of Srijuts K. Bhashyam and Adiga's book which is now 23 years old, will be of real use to and be appreciated by lawyers and clients as well as by the general public that have to handle bills, notes and cheqeus without any fear of loss or Law Courts and with profit to their business.

Madras,
Jan. 4, 1933.

C. RAJAGOPALACHAR.

PREFACE

I KNOW that this edition of the Negotiable Instruments Act is long over-due. The delay is due to my pre-occupation with public affairs.

The five years and more since the appearance of the last edition, have not seen any appreciable addition to the statute law, though, it must be confessed that Courts have provided much material for digest and incorporation. During this period, quite a large number of cases has clustered round the sections relating to the protection of the banker paying cheques crossed and uncrossed and receiving payment of cheques on behalf of customers. This is a sure indication of the growing recognition of the power of the cheque. Indeed, as a cure for the present scarcity of gold, the extension of the use of cheques has been advocated by some currency experts. Whether it is so or not, the volume of business in cheques is certainly growing with astonishing rapidity among the commercial community.

" Whoever devised the cheque and whoever was the inventor of the practice of crossing it, neither realised the potentialities of his discovery and doubtless would have been amazed, could he have foreseen that in a single day as much as £266,255,000/- was cleared through the clearing house" in London.

The portion relating to the above subject and the mutual rights and duties of the banker and the customer had to be completely re-written; it may confidently be said that it will be useful not only to lawyers but also to laymen handling cheques. I have utilised this occasion, thanks to the enforced rest I had, to have errors corrected and also points ambiguous clarified. The case-law up to the end of 1932 has been included. I hope that my ambition to produce a book containing a clear and concise exposition of the main principles of the law of Negotiable Instruments exemplified by the case-law up to date, useful

alike to students and lawyers, bankers and businessmen, has been achieved with some degree of success.

It remains only to thank Mr. J. R. Gundappa Rao, Advocate, who has rendered great help in the revision of the book; I am greatly indebted to Messrs. V. C. Viraraghavan, R. Visvanathan, T. R. Srinivasan and V. P. Chakravarthi, who have been associated with me in my chambers, for the ready and willing help rendered by them throughout the preparation of the book and particularly in the compilation of the index of cases and of matter; and also to Mr. V. K. Srinivasa Iyengar for revising the notes on the provisions of the Limitation Act in the Appendix.

'Champaka Vilas'
Luz, Mylapore,
January, 1933.

K. BHASHYAM.

CONTENTS.

	PAGE
INTRODUCTION	i—xxiii
BOOKS CONSULTED	xxiv
THE BILLS OF EXCHANGE ACT	xxv—lvi
TABLE OF PARALLEL REFERENCE TO THE BILLS OF EXCHANGE ACT	lvii—lviii
LIST OF ABBREVIATIONS	lix—lxii
INDEX OF CASES	(1)
CONTENTS OF SECTIONS	1—8
THE NEGOTIABLE INSTRUMENTS ACT	9—514
APPENDIX A.— Rules Relating to Notaries Public	515—522
APPENDIX B.— Agreements Controlling Negotiable Instruments ...	523—532
APPENDIX C.— Payments by Bills, Notes and Cheques	533—540
APPENDIX D.— Suits on Negotiable Instruments	541—547
APPENDIX E.— The Code of Civil Procedure	548—557
APPENDIX F.— The Indian Evidence Act	558—559
APPENDIX G.— The Indian Limitation Act	560—570
APPENDIX H.— The Indian Paper Currency Act	571—572
APPENDIX J.— The Indian Stamp Act	573—606
APPENDIX K.— Promissory Notes Stamp Act	607
APPENDIX L.— Indian Companies Act	608
GENERAL INDEX	609

INTRODUCTION

THE law relating to negotiable instruments is not the law of one country or of one nation; it is the law of the commercial world in general, for it consists of "certain principles of equity and usages of trade which general convenience and common sense of justice had established to regulate the dealings of merchants and mariners in all the commercial countries of the civilised world." Even now the laws of several countries in Europe are, at least so far as general principles are concerned, similar in many respects. Of course, on questions of detail, different countries have solved the various problems in different ways, but the essentials are the same, and this similarity of law is a pre-requisite for the vast international transactions that are carried on among the different countries.

A negotiable instrument is in more than one sense a 'thing.' In understanding what is meant by a 'thing' in law, we must on the one hand avoid the metaphysical niceties about the conception of 'thing,' and on the other, the peculiar conception of the word in England, as in the phrases, 'things in possession' and 'things in action.' In jurisprudence a 'thing' denotes an object of rights. In one sense every instrument is a 'thing,' in so far as the paper on which it is written is concerned. It is not only in that sense that a negotiable instrument is a 'thing,' but also in the sense that it is a physical embodiment of rights. A person lawfully getting possession of such an instrument acquires title to it, and the same cannot be said of other instruments. Again, it represents money and possesses all the characteristics of money which it represents. For example, it is not tainted by any defect or fraud in the source from which it flows, so long as its acquisition is *bona fide* and for value. It also passes by delivery like cash, and the person in possession of the instrument can sue on it in his own name. It also possesses the characteristics of a contract, for it embodies either an order or promise to pay money. The capacity of the parties to it, the liability of persons on it and the discharge of such liabilities are regulated mostly by the rules belonging to the domain of contracts. It is also regarded as a chattel, and being so, it has been held that the transfer of such instruments should be regulated by the law of the place where the transfer takes place.

The early origin of these instruments is a matter of speculation among text-writers. In primitive societies, the system of bills of exchange could not, of course, have existed ; for firstly, money which it represents was not invented till long after, and secondly, the art of writing was a thing unknown to them. When the system of bartering, by which rude and uncivilised societies carried on their commerce, was found inconvenient, a common medium of exchange and a representative of property of an easily convertible character was found necessary, and money came into use. It might have had its humble origin in cowrie shells, brass or copper rings ; but when once the utility of money was found, it never was lost sight of. With the progress of civilisation, nobler metals displaced the baser ones, and the use of gold and silver as instruments of exchange is now to be found generally current in all civilised countries. With facility of communication between countries, and security of peace between nations, commerce of the world grew apace, and one nation after another struggled for supremacy. The Phœnicians, Grecians and Carthaginians were more or less the chief commercial nations of the ancient world. The routes along which the vast commerce was carried on were insecure, and merchants carrying specie or coins were robbed of their wealth by roving pirates on sea and marauding robbers on land. Money by itself did not obviate all these difficulties arising from the multiplicity of commercial transactions and in the course of some centuries, there came into existence the idea of exchange, whereby letters of credit, generally called bills of exchange, from a merchant in one country, to his debtor, a merchant in another, were issued requiring the debt to be paid to a third person who carried the letter to the place where the debtor resided. A bill of exchange was thus originally an order to pay a trade-debt, and the system of such bills afforded a convenient and facile way for the payment of debts in one country due to a person in another, without the danger or the incumbrance of carrying money in specie. For example, if A in Madras buys goods from B, a merchant in London, and if A has a merchant C in London who owes him money, B of London by getting an order from A on C for the payment of that money to himself, can collect the price of his goods at London without the risk or the trouble of carrying the coins from Madras to London. The loss of interest during the time occupied by the journey, the trouble which A is relieved of in collecting his debt in a foreign place and even the absence of ready money in the hands of A at the time of the transaction, are some of the causes which would promote the wide use of such instruments. It was found that the person in whose favour such order was made might, with advantage, transfer it to another, and such transfers came to be recognised. In its

origin, then, a bill of exchange effected the transfer of trade-debts of persons residing in distant countries and when once the advantages of such a course were realised, the system was extended to apply to inland trade-debts, and gradually to private debts also. By the scrupulous fulfilment of the obligations arising under such instruments in the early stages of their growth, confidence was begotten, and from that confidence arose the peculiar use to which such instruments are now put. The instruments are now merely instruments of credit readily convertible into money and easily passable from one hand to another. With expanding commerce, the growing demands for money could not be met by mere supply of coins, and these instruments of credit took the function of money which they represented, and thus became by degrees, articles of traffic. It may be that the admirers of Socialism may cavil at these instruments as being merely a symbol of a symbol and may not, in their programme for the reconstruction of society, accord them a place. For the present, however, credit is not only the key-stone of modern commerce, but also the sinews of modern industries and enterprises, and so long as credit has these important functions to perform, instruments of credit will also continue to be in use; and the present, perhaps complicated, but certainly convenient practice and rules relating to exchange and the instruments effecting such exchange form a necessary part of the knowledge to be acquired by any practical lawyer or a modern businessman.

Not only did the bills of exchange transfer value from place to place and balance accounts of distant places without the actual transmission of money, but they were also found to contribute to other conveniences. They offered an easy and most effectual means of assigning a debt, " furnishing the assignee with an assignment binding on the original creditor, capable of being ratified by the debtor, perhaps guaranteed by a series of responsible sureties, and assignable, still further, *ad infinitum* ". Besides, by fixing in the bill a time and place for payment and by reducing the debt to a certain amount, the value of the debt was greatly enhanced, and in case of litigation, the bill afforded an easy proof of the debt.

The drawing of the bill for a debt due has this further advantage. For, a creditor, by assigning the bill payable at a long date given to him by the debtor, can obtain from the assignee, for a trifling discount, his money in advance. Besides, if once people have put their hands to bills as acceptors, they will do their best to meet them, because of the fatal consequences of their dishonour. " A debt that is merely in the books of the creditor may be long delayed and the creditor may not like to sue a man, who though slow in payment is yet faithful. "

But if the customer has given a bill for the debt, the bill will circulate into the hands of other persons who will be more peremptory in demanding payment and whose applications cannot be disregarded with impunity. Again, a man dare not dishonour his own acceptance, lest his credit be shaken in the commercial world.

The origin of negotiable instruments cannot be safely traced beyond the early decades of the twelfth century. The passages from the Bible, the pleadings of Isocrates and the orations of Cicero referred to by some of the text-writers and commentators form too slender a basis for assuming that mercantile instruments were in vogue in ancient days. The history of these negotiable instruments and their career in England are well traced by Lord Chief Justice Cockburn in the case of *Goodwin* v. *Robarts* reported in Volume X of the Exchequer Law Reports, page 337, of which the following is a summary :—

The law as to bills of exchange and other negotiable securities forms a branch of the general body of the Law Merchant and is comparatively of recent origin. The origin of these instruments can be traced to the usage and custom of merchants and traders, which Courts of law have adopted as settled law, in view of the general interests of trade and the convenience of the public. Thus, a general usage, being ascertained and ratified by the decision of Courts of law, becomes a part of the general law of the country which the Courts are bound to recognise. Bills of exchange seem to have been brought into use by the Florentines in the twelfth, and the Venetians in the thirteenth century. Though in England, there is reason to believe that bills of exchange were known earlier, their use does not seem to have been general, even as late as 1622. About the close of the sixteenth century, the practice of making bills payable to order and of transferring them by indorsement took its rise. At first, such bills were allowed only between merchants in foreign countries, but were gradually extended to traders in the same country and finally to all persons, whether traders or not. About this time, the usage among merchants of making promissory notes payable to bearer or to order, began to prevail and was more than once even recognised by Courts in England. But in 1703 when Lord Holt was the Chief Justice of England, he opposed this extension of negotiability and persistently refused to recognise the custom of merchants, and the Legislature had to end the unseemly conflict by passing the Statute of 3 and 4 Anne c. 9, whereby promissory notes were made capable of being assigned by indorsement.

Cheques do not seem to have been introduced in England till the seventeenth century ; for, it is really then that the business of banking

was undertaken by goldsmiths in England, who borrowed the practice from Holland and from the money-dealers of Florence who flourished as early as the thirteenth century.

In India, there is reason to believe that instruments of exchange were in use from early times and we find that papers representing money were introduced into the country by one of the Muhammadan sovereigns of Delhi in the early part of the fourteenth century, the idea being borrowed from China; and it is the accepted theory of the western Savants, that in China a perfect system of paper-currency and banking had been developed as early as the tenth century and it is not improbable that such an idea filtered into India sometime later. In fact, the word 'hundi,' a generic term used to denote instruments of exchange in vernacular, is derived from the Sanskrit root '*hund*' meaning 'to collect," and well expresses the purpose to which such instruments were utilised in their origin.

Before the passing of the Act, the law of negotiable instruments as prevalent in England was applied by the Courts when any question relating to such instruments arose between Europeans. When the parties were Hindus or Muhammadans, their personal law was held to apply. Though, neither the law books of Hindus nor those of Muhammadans contain any reference to negotiable instruments as such, the customs prevailing among the merchants of the respective community were recognised by the Courts and applied to the transactions among them. There is no doubt that by the time the Act came to be passed in 1881, there had developed in the country a strong body of usage relating to hundis, which even the Legislature could not without hardship to native bankers and merchants ignore. In fact, the Legislature felt the strength of such local usages and thought fit to exempt them from the operation of the Act, with however, a proviso that such usages may be excluded altogether by appropriate words. In the absence of any such customary law, the principles derived from English law were applied to the Natives of India as rules of equity, justice and good conscience.

Prior to the present Act, the Statutes of 9 William III, c. 17 relating to inland bills of exchange, and 3 and 4 Anne c. 8 relating to promissory notes were in force in India, and Acts VI of 1840 and V of 1866 passed by the Governor-General in Council were some of the attempts made to regulate the law concerning the negotiation of bills of exchange in India. The above Statutes and Acts were repealed by the Act of 1881.

The present Act is but a codification of the English law on the subject with some trivial deviations. Compared with the English Bills

of Exchange Act which was passed a year later, or some of the great Anglo-Indian Codes, the Act cannot be said to be a brilliant performance. It has neither the finish of the Penal Code, nor the clearness of the Contract Act; nor can it boast of the analytical powers displayed in the Evidence Act. But the subject was a difficult one, the law on many points was unsettled and no precedent was available to guide the framers of the Act. It must be recognised, however, that in spite of these difficulties, they have succeeded in achieving a good measure of their object.

The Act in its arrangement follows the book of Justice Byles on the subject. The arrangement adopted in the Act is what may be called a natural arrangement, for the subject is dealt with in the order of the stages through which an instrument passes from its beginning to its payment and discharge. A more scientific arrangement is that adopted in the English Bills of Exchange Act, it being clearer and more analytical. In some respects, the Act is defective and such defects are adverted to in the commentaries. The more important of them are the ambiguous provision relating to the right of recourse of the holder against the drawer on dishonour, the omission to deal with the effect of forgery on negotiable instruments, and the absence of a specific provision for the discharge of parties by payment of cheques in due course by banker, which has since been set right.

The history of the present Act is rather a long one. The Act was originally drafted in 1866 by the Indian Law Commission and introduced in December 1867 in the Council, which referred it to a Select Committee, but objections were taken by the mercantile community to the numerous deviations from the English Law which it contained, and the Bill had to be recast in 1877 on a large scale, which was done by Mr. Phillips of the Calcutta Bar. After the lapse of a sufficient period for the criticism of the Local Governments, the High Courts and the Chambers of Commerce, the Bill was revised by a Select Committee which made certain alterations in wording and substance. Even then, the bill had not reached its final stage, for in 1880 by the order of the Secretary of State, the Bill had to be referred to a new Law Commission composed of Sir Charles Turner, Mr. Justice West and Mr. Whitley Stokes, who found little or nothing to change in the bill but suggested certain important additions, such as, the saving of local usages relating to hundis. The next stage in its history was that the Bill was again considered by a Select Committee which adopted most of the additions recommended by the new Law Commission and made some unimportant changes. The draft thus prepared for the fourth time was introduced in the Council by

the Hon. Mr. Whitley Stokes and passed into law. The Act has been amended since, by ten Enactments, II of 1885, VI of 1897, IV of 1914, V of 1914, VIII of 1919, XXV of 1920, XII of 1921, and XVIII of 1922, XXX of 1926, XXV of 1930, chiefly with the object of assimilating the law in the Act to the law contained in the Bills of Exchange Act, 1882. In fact, the amendments are but the adoption of the sections of the English Act.

The Act confines itself to promissory notes, bills of exchange and cheques, the three kinds of negotiable instruments most in common use. The provisions of the Act are also applicable to negotiable instruments in an oriental language, such as, hundis, except where there are local usages governing such instruments. [Preamble] *[1]

A negotiable instrument is defined by the Act to be a promissory note, bill of exchange or cheque payable either to order or to bearer. [13]

This definition is the result of an amendment of the Act in 1919 by Act VIII of 1919. Before the said amendment, it was necessary that instruments to be negotiable should contain words of negotiability such as, 'order' or 'bearer.'

A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable. A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank. [13 Expln. (i)] [13 Expln. (ii)]

Where a promissory note, bill of exchange or cheque either originally or by indorsement, is expressed to be payable to the order of a specified person and not to him or his order, it is nevertheless payable to him or to his order at his option. [13 Expln. (iii)]

A promissory note is an instrument in writing, signed by the maker containing an unconditional undertaking to pay a certain sum of money only to a certain person or his order or to the bearer. A bill of exchange is also an instrument in writing, signed by the maker, but it is an unconditional order addressed to a third person to pay a certain sum of money only to a certain person or his order or bearer. A cheque is a species of bill of exchange drawn on a specified banker and always payable on demand. In all these three kinds of negotiable instruments, it is necessary that either the promise or the order, as the case may be, must be an unconditional one, that is to say, the payment of money should not be made to depend upon a contingency. But a promise or order to pay [4] [5] [6]

* Reference is to the section of the Act.

[5] is not conditional if the time for payment is fixed with reference to an event which is inevitable ; for all that is required is that the day of payment, however remote, must be certain, naturally speaking, to arrive sooner or later. Besides, the amount mentioned must be certain and incapable of variation, for certainty is one of the essential requisites of negotiable instruments. Further a bill, note or cheque should be expressed to be payable in money and money only, but need not necessarily be in Indian currency. The sum is certain, although it includes future interest or is payable at an indicated rate of exchange or is payable by instalments with a provision that on default the whole shall become payable. One other common requisite of these instruments is that the person to whom the money is promised or ordered to be paid must be certain, or at least must be indicated with reasonable certainty, though mis-named or mis-described. A negotiable instrument can, however, be made payable to two or more payees jointly or it may
[13 (2)] be made payable to one of two, or one or some of several payees. It may be useful here to notice the points of difference between these instruments. As will be seen, in the case of promissory notes only two parties are necessary, the person who makes the instrument, called the 'maker,' and the party to whom the promise is made, called the 'payee'; but for a regular bill of exchange, three parties are essential: they are, the party making the instrument,
[7] called the 'drawer;' the person to whom the order is addressed, called the 'drawee;' and the person to whom the money is ordered to be paid, called the 'payee.' When the drawee to whom the bill is addressed signs on the instrument in signification of his assent to the order made, his signing is called the 'acceptance,' and he is then called the 'acceptor.' Such an acceptance is invalid unless it is written
[33] on the bill itself and signed by the drawee, and can be made only by the drawee indicated in the instrument except in case of need or for
[34] honour, and in the case of a number of drawees each can accept for himself only, unless authorised; but when they are partners, the acceptance of one is acceptance of all and binds them all. There is nothing like acceptance of promissory notes, and it may be said generally that the maker of a promissory note and the acceptor of a bill of exchange stand on the same footing as regards their rights and duties. Cheques have many points of similarity with bills of exchange, but are also dissimilar in some respects. The drawee of a cheque must always be a banker and the instrument must not be payable otherwise than on demand. Cheques, like promissory notes, do not require acceptance but only prompt payment. In addition to the drawee in a bill of exchange, there may sometimes be, generally in cases where it is doubt-

ful whether the drawee will accept, inserted in the bill the name of a person to be resorted to in case of need and such person is called a [7] 'drawee in case of need.' Resort to such person is optional under the English law, but under the Act, the holder must present to him in all cases; otherwise, he loses all his remedies. Where a drawee in case [115] of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee. A drawee in case of need may accept and pay the bill of [116] exchange without previous protest. Except for these essential requisites, the instruments may be in any form; no date or place is essential, nor is a statement that value was received necessary. Other minor irregularities will be condoned, if they do not touch the essentials.

Though on a bill of exchange, three parties are said to be necessary, it may sometimes happen that one or more of the parties may be wanting. Thus, a bill may be drawn payable to the order of the drawer himself or to his order, or to the drawee or to his order; or again, it may happen that the drawer and the drawee may be the same person, when the instrument is said to be an ambiguous one. In such cases, [17] and in cases generally where an instrument may be construed either as a promissory note or as a bill of exchange, the holder has the option of treating it as either. Often in mercantile transactions, parties lend their credit by signing their names on blank stamped papers to be afterwards filled up by the persons to whom they are delivered or by [20] persons acquiring them through such persons. Such instruments, are called inchoate stamped instruments and when delivered, are deemed to give authority to the holder to complete the instrument for not more than the amount covered by the stamp.

Certain rules of construction are enunciated. Where the amount is [18] stated differently in figures and in words, the amount stated in words shall be the amount ordered to be paid. A promissory note or bill of exchange in which no time of payment is specified, and a cheque, are [19] payable on demand.

Every person capable of contracting, may become a party to a [26] negotiable instrument and will be bound in the same way as in other contracts. It is to be noticed, however, that a negotiable instrument is not invalid simply because one or more of the parties is incapable of contracting, by reason of minority or of unsoundness of mind or of other disabilities imposed by law, as in the case of corporations and disqualified proprietors. Ofcourse, such persons are not themselves bound by their contract, but they are capable of conveying or transmitting title, though not of orginating it.

As in other contracts, persons can employ agents to bind them as [27]

parties to negotiable instruments; the authority must, however, be clear and the agency must be disclosed on the face of the instrument.
[28] Otherwise, the rule is that a person whose name appears on the instrument should be held personally responsible. The rule is the same in
[29] the case of a legal representative who, in the management or the administration of the estate of a deceased person makes or indorses a negotiable instrument.

[21] The expressions 'at sight' and 'on presentment' in a promissory note or bill of exchange mean on demand. The expression 'after sight' in a pronote means after presentment for sight, and in a bill of exchange, after acceptance or noting for non-acceptance or protest for non-acceptance. One of the characteristic features of a negotiable instrument is that the debt due under it may be assigned over to a third party by what
[14] is called 'negotiation.' Such negotiation may take place in two ways;
[46] if the instrument is payable to bearer, it is negotiable by delivery thereof, but if it is payable to order, negotiation can take place only by in-
[47, 48] dorsement of the holder and delivery by him. As we have already seen, a negotiable instrument contains either a promise or an order to pay A or his order, or to pay B or bearer. It is this provision for alternative payment that makes the instrument really negotiable. The Law Merchant extends this rule somewhat, by providing that the payee named may not only indicate a person to whom the sum may be paid, but also order the sum to be paid to the order of that person. Thus, there may be a series of parties to the instrument, each party making the money paya-
[15] ble to the succeeding one or to his order. These are called the 'indorsers' of the instrument, and an 'indorsement' may therefore be defined as the signing on the instrument for the purpose of negotiation. It may sometimes happen that an instrument is, by rapid circulation covered up with indorsements; and then it is permissible to tack on a piece of paper, called an *allonge*, for further indorsements to be made on it. The person in whose favour the indorsement is made is called
[50] the 'indorsee.' The effect of an indorsement followed by delivery is to transfer to the indorsee not only the property in the instrument but also the right of further negotiating the instrument to other persons.

[16] Indorsements are of two kinds:—(1) an indorsement *in blank*, *i.e.*, where the indorser signs his name only, and (2) an indorsement *in full*, where the indorser indicates the person to whom or to whose
[54] order, the payment is to be made. The effect of an indorsement in blank is to make the instrument negotiable by mere delivery
[49] as in the case of an instrument payable to bearer. The holder may convert a blank into a full indorsement by writing above the

indorser's signature, a direction to pay to any other person; the advantage of such a course being that he does not incur the liabilities of an indorser. If a negotiable instrument after having been indorsed in [55] blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person. The holder may also exclude his own liability, by indorsing the instrument '*sans recourse*' or may make his liability conditional. He can further restrict [52] or exclude the right of the indorsee to further negotiate the bill by appropriate words in the indorsement, such as 'pay C only' or 'pay C for my use' or 'pay C for B.' Further, the indorsement to be valid must be of the entire bill. An indorsement purporting to transfer a part only of the sum payable, or to transfer the bill to two or [56] more indorsees severally, does not operate as a negotiation of the bill.

An indorsement must always be made by the holder of the instru- [51] ment; every sole maker, drawer, payee or indorsee, and if there are more than one of them, all of them may indorse and negotiate the instrument, but to do so, he or they must be the holder or holders in lawful possession of the instrument. It follows, therefore, that no stranger, *i.e.*, a person not a holder, can indorse so as to convey title. A person may indorse as agent of the holder, but in doing so he must take care to denote that he signs as agent and does not intend to incur personal liability. A legal representative of a deceased person cannot [57] by delivery alone negotiate an instrument payable to order, left indorsed by the deceased, but not delivered.

A bill of exchange or a promissory note is negotiable *ad infinitum* [60] until payment or satisfaction thereof by the maker, drawee or acceptor at, or after maturity, but not afterwards.

The Act properly concerns itself only with transfers of instruments according to Law Merchant, and leaves the question of transfer by operation of law or by way of assignment as a chose-in-action to be governed by the ordinary rules relating to such transfers.

The Law Merchant attaches to negotiation an important consequence which is necessary for the general convenience of trade. By negotiation, any person taking the instrument *bona fide* and for value acquires a good title to it, whatever might have been the defects in the title of the transferor. It is this feature, combined with its transferability by delivery like cash, which determines the negotiability of an instrument. In the case of ordinary transfers, for example, of a bill of lading or a debt, the transferee ofcourse gets a right to sue in his own name, but he acquires no better title than what his transferor had. Title in a negotiable instrument is dependent upon

the manner of its acquisition rather than upon the title of the transferor. In this respect, negotiable instruments resemble coins of the realm which pass from hand to hand without being tainted by the title of the transferor.

[9] To acquire a title better than that of the transferor, a person must be a holder in due couse, *i. e.*, a person who for consideration became the possessor of the instrument, if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. The definition is important and requires
[8] some detailed notice. The 'holder' is itself defined as a person entitled in his own name to the possession of a promissory note, bill of exchange or cheque and to receive or recover the amount due thereon from the parties thereto. A holder in due course as stated
[9] already must have taken the instrument before the amount mentioned in it became payable, *i.e.*, before the maturity of the instrument.
[22] Maturity of an instrument is the date on which it falls due; but where
[21] an instrument is payable on 'demand,' 'presentment' or 'sight,' it is payable on presentation; if otherwise, it is not said to be payable till the expiry of three days after the date on which it is expressed to be
[22] payable. These days are called 'days of grace,' and though originally gratuitous and allowed for the convenience of the drawee, they now
[23] attach to every bill or note. A bill or note payable a number of months after date is said to be at maturity on the day of the month corresponding with the date of the instrument. If there is no such day, the period shall be held to terminate on the last day of such
[24] month. In calculating the date of maturity of an instrument payable so many days after sight or after date, the day of the date or of presentment for acceptance or sight ought to be excluded. If the day of
[25] maturity is a public holiday, the instrument is payable on the next preceding day. A public holiday includes Sundays, New Year's Day, Christmas Day, Good Friday, and any other day notified by the Local Government in the Gazette to be a public holiday. If the New Year's Day or the Christmas Day falls on a Sunday, the next following Monday is also a public holiday.

[59] The maturity being thus determined, a person taking an instrument after maturity gets no better title than his transferor. If the
[53] transferor is himself a holder in due course, the transferee would also be a holder in due course; if he is not, he will take the instrument subject to all the defences available against the transferor. Further, a holder in due course ought to have paid consideration: thus, a donee

of an instrument is in no better position than his donor, and will be subject to all the defences available against the donor. A holder in due course must not have had notice of the defect in the title of the [9] transferor, nor should he have had any cause to believe the existence of such defect, such as, an irregularity on the face of the instrument, or the offer of the instrument for a low price, or the negotiation of the bill by a person not a party to the instrument. A defective title to an [58] instrument generally arises when a negotiable instrument is lost or is obtained from any maker, acceptor or holder thereof, by means of an offence or fraud, or for unlawful consideration. In such cases no person who so obtained the instrument, nor any one claiming through him, is entitled to receive the amount due thereon from such maker, acceptor or holder or from any prior party, unless such person or indorsee is or some person through whom he claims was, a holder in due course.

When a bill of exchange is lost, the holder at the time of the loss does not lose his title to it. He is still the owner and can sue the parties to the instrument for the amount due on the bill, but he must offer security to the other persons against any loss they may be put to if the instrument is found, and they are made to pay it. The holder has the right, if the instrument is lost before maturity, to a [45-A] duplicate of the bill from the drawer, of the same tenor; but even in this case, he must give security to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again. Different considerations may perhaps arise where the bill is proved to have been destroyed without the possibility of its being found again; in that case an indemnity may not be necessary, though it is safer to take security.

The payee or the holder taking an instrument has certain duties [61, 62] to perform before he can claim payment. Where a bill or note is payable after sight, presentment for acceptance or sight must be made to the drawee or maker, as the case may be, in order to fix the maturity of the instrument. In default of such presentment, no party thereto [64] is liable thereon to the person making such default. In respect of other instruments, presentment is not necessary, but the holder may, to secure the liability of the drawee also, present them for acceptance. Presentment, when necessary, must be made within a reasonable time [65] after the making or the drawing of the instrument, within business hours, on a business day, and must generally be to the drawee or the maker personally, if he can be found. Presentment for acceptance may also be made, if allowed by agreement or usage, through [61] the Post Office by means of a registered letter. By Act XIV of

1916 as amended by Act IX of 1917, provision was made for
[63] excusing the delay in presentment for acceptance, if the delay was due to circumstances arising out of the war. This measure was in force only for the period of the war and for six months thereafter. However, by Act XXV of 1920 it is now provided by Section
[75-A] 75A, the delay in presentment or acceptance is excused if it was due to causes beyond the control of the holder and not imputable to his default. Directly the cause of the delay ceases to operate, presentment must be made within a reasonable time. On presentment, the drawee is entitled to forty-eight hours, exclusive of public
[63] holidays, to consider whether he will accept or not ; and if the holder allows more than forty-eight hours, he does so at his peril, for the other parties will be discharged. When a bill is duly presented for acceptance and is not accepted within the forty-eight hours allowed,
[91] the holder may treat the bill as dishonoured by non-acceptance. The holder may also treat the bill as dishonoured, if the drawee is incompetent to contract or the acceptance is qualified. On such dishonour either by the drawee or one of several drawees not being partners, there accrues to the holder a right of recourse against the drawer and indorsers without a further necessity for presentment or payment, but the
[93] holder has to give the necessary notice of dishonour or protest (which will be dealt with later on).

If the drawee chooses to accept, he must do so on the instrument itself, by signing on it and delivering the instrument to the holder or by giving notice of such signing to the holder or some person on his behalf. If the drawee is not prepared to give an unqualified acceptance, the holder may treat the bill as dishonoured and give the necessary notice, unless he gets the consent of the prior parties. An acceptance is said to be qualified when it undertakes to pay only part of the sum ordered to be paid, or makes the payment
[86. Expln.] dependent upon the happening of an event, or makes the amount payable at a place different from that mentioned in the bill, and there only and not elsewhere ; or undertakes to pay at a time different from that specified in the order.

The next step to be taken by the holder is duly to present the instrument for payment. If it is not so presented, the drawer and indorsers will be discharged. If the instrument is not payable on demand, presentment must be made on the day it falls due, and if it is one payable on demand, it must be presented for payment within a
[66] reasonable time after it is received by the holder. Instruments payable after date or sight, must be presented for payment at maturity. A
[67] promissory note payable by instalments must be presented for pay-

ment on the third day after the date fixed for payment of each instalment. When a maker, drawee or acceptor has no known place of residence, presentment may be made to him in person wherever he can [71]
be found. A cheque, in order to charge the drawer, must be drawn at the bank, before the relation between the drawer and his banker has [72]
been altered to the prejudice of the drawer. A cheque in order to charge any other person must be presented for payment within a [73]
reasonable time after it is received by the holder. Delay in presentment for acceptance or payment is excused, if the delay is caused by [75-A]
circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of the delay ceases to operate, presentment must be made within a reasonable time. [74]
Presentment must be made by the holder or some person on his behalf within business hours on a business day, at the place specified, if any, [70]
or at the usual residence or place of business of the drawee, acceptor or [68, 69]
maker, as the case may be. Presentment may be made to the drawee, maker or acceptor or to his authorised agent, or if such person be dead, [75]
to his legal representative, or to the Official Assignee, if the payee is insolvent. Presentment is excused in the following cases :—

(1) When the holder is prevented by the drawee, maker or acceptor or when such person is not to be found at the place specified or at his business place during business hours, or again, if he cannot be found after reasonable search. [76]

(2) when presentment is waived by a party, by making a promise to pay notwithstanding non-presentment, or by making a part-payment on account of the amount due on the instrument.

(3) when the drawer could not suffer damage for want of such presentment.

If the drawee or the banker at whose place the presentment may be made, does not choose to pay, he is bound to return the instrument to the holder so that he may pursue his remedies against the others. If the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate [77]
the holder for such loss. If on presentment, payment is made by the [90]
drawee, acceptor or maker, the instrument is discharged and the liabilities of all the parties to the instrument are also at an end. If, on [92]
presentment, as above stated, no payment is made on that day after due demand, the instrument is said to be dishonoured, and the holder is entitled to proceed against the other parties on the instrument. Where a drawee in case of need is named in a bill of exchange or in [115, 116]
any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee. A drawee in case of need may accept and pay the bill of exchange without protest.

[93] In order to fix their liability, however, the holder or some party who remains liable on the instrument must give notice, that the instrument has been dishonoured, to all other parties whom the holder seeks to make severally liable or to some one of the several parties whom he seeks to make jointly liable thereon.

[94] Notice may be given to an agent or the legal representative of a deceased holder or to the Official Assignee, if the holder is insolvent. The notice may be in any form, but it must express in reasonably clear terms that the instrument has been dishonoured, how it was dishonoured and that the person receiving the notice will be held liable. Notice may be oral or written and if written, may be sent by post; but the holder must take care to direct the notice to the proper address and if it miscarries, he will not be responsible. Notice must be given within a reasonable time after dishonour at the place of business, if there be one, or at the residence of the party for whom it

[105] is intended. In determining what is reasonable time, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and in calculating such time, public holidays shall be excluded. Reasonable time for notice of dis-

[106, 107] honour is computed as follows :—If the holder and the party requiring notice carry on business and live in different places, notice despatched by the next post or on the day next after the day of dishonour is within time. But if they live or carry on business in the same place, it is enough if the notice is despatched in time to reach its destination on the day next after the day of dishonour. Again, the party receiving

[95] notice may in his turn give notice to prior parties so as to secure their liability to him and the time allowed to him is the same as if he were the holder. For purposes of notice of dishonour, an agent is treated

[96] as if he were the holder and is given a reasonable time to give notice to his principal. When the party to whom notice of dishonour is

[97] despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

[98] Notice may, however, be dispensed with by the party entitled to it, or he may impliedly do so by countermanding payment, or by promising to pay notwithstanding absence of notice. When the party entitled to notice cannot after reasonable search be found, or when he cannot suffer for want of notice, as where the drawee has no funds of the drawer in his hands, want of notice of dishonour will be excused. Again, notice of dishonour is unnecessary to charge the drawers when the acceptor is also a drawer.

In certain cases, notice of protest will be necessary instead of

[104] notice of dishonour. In the case of foreign bills, when, by the law of

the place where they are drawn, protest is necessary, notice of protest must be given instead of notice of dishonour. A foreign instrument is an instrument which is not inland; and an inland instrument is an instrument drawn in British India, and either made payable in British India or drawn upon a person in British India. [11, 12]

Protest is a certificate signed by a notary public of the dishonour of the instrument either by non-acceptance or by non-payment. It generally contains either the instrument or a copy of it, the name of the person for whom and against whom the protest is made, a statement of the demand for payment or acceptance, the terms of answer thereto and the place and the time of dishonour. But, for the purpose of the Act, it is provided that, where protest is necessary, it is sufficient if a noting for protest is done before the specified time, and the formal protest may be extended at any time thereafter as of the date of the noting. Noting is a minute made by the notary public within a reasonable time after dishonour, specifying the date and the reason of such dishonour. It also contains the notary's charges. Power to appoint and to make rules for notaries public are also provided for. When a promissory note or bill of exchange is required to be protested, notice of such protest must be given instead of notice of dishonour. A bill payable at a place different from that of the residence of the drawee, if dishonoured by non-acceptance, need not be again presented for payment, and demand need not be made again by the holder. The holder can protest for non-payment, at the place specified for payment, unless the bill is paid before or at maturity. [100, 101] [104, A] [3] [99] [138, 139] [102] [103]

Having thus fixed the rights of the several parties to a negotiable instrument, let us see what are the respective liabilities of those persons. First, as to the drawer of a bill of exchange, he contracts that on due presentment the bill shall be accepted and paid according to its tenor, and that if it be dishonoured, he will compensate the holder or any indorser who is compelled to pay it, provided he receives due notice of dishonour. Further, being the author of the instrument, he will not be allowed to deny its validity as originally made or drawn. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque, must honour the cheque when duly required so to do, and in default of such payment, he must compensate the drawer for any loss or damage caused by such default. But a mere drawing of a cheque is not an assignment of the funds of the drawer in the drawee's hands in favour of the holder. The same is true of bills of exchange also. [30] [120] [31]

The liabilities of the maker of a note and the acceptor of a bill are in most cases alike. Both of them are bound to pay the amount [32]

of the instrument at maturity according to the apparent tenor of the note or of the acceptance respectively; in default, such person is bound to compensate any party to the instrument for the loss or damage
[120] caused to him by such default. The maker of a promissory note is estopped from denying the validity of the instrument as originally
[121] made, and cannot in a suit by a holder in due course plead the incapacity of the payee to indorse the instrument. The acceptor too cannot deny the payee's capacity, nor can he deny the authority of the drawer to draw or indorse the bill, though he may plead that the bill
[41] was not really drawn by the person by whom it purports to have been drawn. It is also open to an acceptor to show that an indorse-
[42] ment is forged, but if he accepted the bill knowing or having reason to believe that the indorsement was forged, he cannot escape liability. Again, when a bill is drawn in a fictitious name payable to the drawer's order, the acceptor is still liable to a holder in due course, claiming under an indorsement by the same hand as the drawer's signature which purports to be made by him.

[35] As regards an indorser, his liability is much the same as that of the drawer of a bill of exchange. In fact, he is said to be a new drawer and is bound to compensate every subsequent holder, in case of dishonour by the drawee, maker or acceptor, for any loss or damage caused to him, provided he receives due notice of dishonour. Moreover, an indorser cannot, in a suit by the holder, deny the signature or the capacity of any prior party to the instrument.

[36] The liabilities of parties to a negotiable instrument *inter se* are regulated thus: every prior party is liable to a holder in due course
[37] until the instrument is duly satisfied. The maker of a note or cheque, the drawer of a bill of exchange until acceptance and the acceptor are respectively liable as principal debtors; and the other parties are liable only as sureties for the drawer, maker or acceptor, as the case may be.
[38] As between parties so liable as sureties, each prior party is also liable on the instrument as principal debtor in respect of each subsequent party. These relations are, however, subject to any contract to the contrary, as in the case of accommodation bills.

No contract gives rise to any liability, unless the transaction is supported by consideration. However, an important distinction in the case of negotiable instruments is to be noticed. These instruments being mercantile instruments intended for free circulation like cash, the Law-Merchant lays down restrictions as to the defence of want of consideration. The defence of want of consideration is admissible only as
[43] between parties who stand in immediate relationship with each other. The drawer of a bill of exchange is said to stand in immediate relation-

ship with the acceptor; and the maker of a note, bill or cheque is immediately related to the payee; and so is an indorser to his indorsee. Thus, if a negotiable instrument is made, drawn, accepted, indorsed or transferred without consideration or for a consideration which fails, it creates no obligation between the parties to the transaction. On the same principle, a party accommodated, paying the amount of the instrument, cannot recover such amount from any person who so accommodated him. Partial absence or partial failure of con- [44]
sideration, consisting of money stands on the same footing as its total absence or failure. Hence, the payee is not entitled to recover to the extent to which the consideration has failed or is absent; but in case of partial absence or failure of consideration not consisting of money, such part of the consideration must be ascertainable in money [45]
without collateral inquiry; otherwise, it will not bar the recovery of the whole amount.

Though the rule is that only the drawee of a bill of exchange can accept the instrument, yet in one special case, a stranger may accept for the honour of any party liable on it. When a bill is noted or [108]
protested for non-acceptance or for better security, any person not a party to the bill already, can by writing thereon make a declaration [109]
that he accepts under protest the instrument generally for honour (in which case, it will be presumed to be made for the honour of the [110]
drawer), or for the honour of any person specially named. Such acceptor for honour is liable to all parties subsequent to the person for whose honour he accepts; that liability is not absolute but conditional [111, 112]
on (1) presentment to the drawee for payment; (2) a refusal by him to pay or honour the instrument; (3) noting or protesting for such dishonour; and (4) a presentment to himself for payment. On payment, he is entitled to recover compensation from the party for whose honour he accepts and those prior to him.

Generally, no stranger can voluntarily pay the debt of another and require re-imbursement from the party whose debt was so paid; exception is made, in the interests of commerce, in respect of bills of [113]
exchange, and it is provided that any person, though not a party to the bill may, when the bill has been protested or noted for non-payment, pay for the honour of any party to the instrument. When he so pays [114]
it, he is placed in the position of the holder with reference to the party for whose honour the payment is made and to those prior to him.

The compensation payable to the holder consists not only of the [117]
amount due on the instrument but also of the expenses incurred in noting, protesting and of any loss caused by re-exchange. The amount [79]
due under the instrument includes interest at the rate specified in the

[80] instrument, if any, and if there is none specified, interest at six per cent. per annum from the date at which it ought to have been paid. When an indorser has paid the amount, he is entitled to the amount paid by him with interest at six per cent. per annum from the date of payment, as also the expenses covered by dishonour and payment and the loss caused by re-exchange.

The party entitled to compensation may draw upon the party liable, a bill payable at sight or on demand for the amount due, together with the expenses properly incurred; such instrument being always accompanied by the instrument dishonoured. The party liable to pay must honour the bill on due presentment; otherwise, he will be liable to compensate in the same manner as in the case of the original bill.

[82] Discharge of liability generally takes place by payment of the amount due on the instrument. Any party to the instrument may pay [78] the holder and take up the instrument, looking to the prior parties for re-imbursement. Thus, though one or more of the parties may be discharged, the liabilities of others will stand, unless the instrument itself is discharged. That can take place only when payment is made to the holder of the instrument by the maker, drawee or acceptor at or after maturity. Any person paying the amount or called upon to pay [81] the amount is entitled, for his own satisfaction and security, to have the instrument shown to him before payment, and on payment, to have it delivered up to him. If, however, the instrument is lost or cannot be found, the payer is entitled to be indemnified against any further claim. In case of bills payable to bearer, a discharge may take place even though payment is not made to a holder, *i.e.*, a person having a lawful title to the instrument. All that is required in such cases is that the payer should pay it in due course, that is to say, the payment must be [10] according to the apparent tenor of the instrument to any person in possession of it under circumstances not affording a reasonable ground for the belief that the person demanding payment is not entitled to it. The parties to the instrument are also discharged, as we have already seen, [61, 64] by the *laches* of the holder either in presenting the instrument for acceptance, where acceptance is necessary, or in presenting it for payment, when such presentment is required by the Act. Or again, the absence of notice of dishonour to the person sought to be charged will effectually relieve him from liability; but the maker and acceptor being [93] principal parties liable on the instrument are not discharged generally either by non-presentment or by absence of notice. The drawer of a cheque is treated as a principal party in some respect; for he is not [84] discharged from liability by mere non-presentment of the cheque for

an unreasonable length of time after its issue. He is discharged only when he actually suffers damage through the delay, and then too, to the extent of such damage only.

A holder may by his own acts discharge the parties to an instrument from their liability to him, by cancelling such persons' names with intent to discharge them or by otherwise releasing them from their liability. In such cases, not only is the party released, discharged from liability, but also those who have a right to expect reimbursement from such person. This is on the ground that each party is a principal party liable on the instrument with reference to those coming after him. In like manner, it is provided that when the holder of an accepted bill enters into any contract with the acceptor which under sections 134 and 135 of the Indian Contract Act would discharge other parties, or when he, without the consent of the indorser, impairs or destroys his remedies against any prior party, the other parties in the one case and the indorser in the other, are discharged from liability. However, in the case of contracts with the acceptor, the holder may expressly reserve his rights to charge other parties, in which case they will not be discharged. Discharge of parties also takes place when the holder allows more than forty-eight hours for deliberation or takes qualified or conditional acceptance. Any material alteration of the instrument by the holder or while it is in his custody, renders the instrument void against any party who does not consent to it, unless the alteration is made in order to carry out the common intention of the parties. As regards persons who have become parties to the instrument after the alteration, they would still be bound.

[82] [39] [40] [83, 86] [87] [88]

Now with regard to the crossing of cheques. Where a cheque bears across its face an addition of the words 'and company' or any abbreviation thereof between two parallel transverse lines, or where there are two such lines simply, the cheque is said to be crossed 'generally.' Where, to the crossing, the name of a banker is also added, the crossing is said to be 'special.' The advantage of crossing a cheque is that such crossing operates as a direction to the banker that the draft is to be paid only to, or through a banker, and if specially crossed, only to, or through the banker to whom it is crossed, or his agent for collection. If he pays it otherwise than through such banker, he will be liable to the true owner of the cheque for any loss he may sustain by reason of the cheque having been so paid. If, however, the banker has paid the same in due course, he and the drawer are placed in the same position, as if the true owner had received the amount. The holder may cross an uncrossed cheque generally or

[123] [124] [126] [129] [128]

[125] specially or if it has been crossed generally he may cross it specially. A banker to whom the cheque is specially crossed is authorised to [127] cross it to another banker, his agent for collection. Payment of a cheque crossed specially more than once is also prohibited.

Special provisions have been enacted for the protection of bankers paying in good faith moneys of their customers on the cheques issued [85] by them. A banker may safely pay a cheque payable to order, if it purports to be indorsed by or on behalf of the payee, that is, the banker is free of all responsibility in respect of either the genuineness or validity of the indorsement purporting to be that of the payee on the one hand or of his agent on the other; for to hold otherwise would be a most serious hindrance to the despatch so essential in banking business, and would create serious impediment to the negotiability of a cheque drawn to order on a bank. The said provision has [85-A] been made applicable to banker's drafts also, that is, cheques drawn by a bank on itself or one of its branches. On the same principle is a banker protected by payment of an altered cheque, promissory note or [89] bill of exchange, if the alteration is not apparent or if he pays a cheque across the counter if the crossing does not appear to have been so altered in the instrument or has been obliterated. In all these cases, it is necessary that the payment must be made according to the apparent tenor of the instrument at the time of the payment or otherwise in due course.

[131] Further, a banker who in good faith and without negligence receives payment from a customer, of a cheque crossed to himself is protected in case the title to the cheque proves defective. A banker [131 Expln.] receives payment of a crossed cheque for a customer within the meaning of this principle notwithstanding that he credits his customer's account with the amount of the cheque before receiving the payment [130] thereof. Sometimes, a holder of a crossed cheque may add to the crossing, the words 'not negotiable,' in which case the person taking such an instrument, shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Generally, foreign bills are drawn in parts, each part being num- [132] bered and providing that it shall continue payable only so long as the others remain unpaid. All the parts together make one set; and the whole is only one bill, and the discharge of one extinguishes the others also. Acceptance of such bills must be made on only one of them, and if the acceptor accepts more than one, he and the subsequent indorsers are liable on such parts, as if they were separate bills. A holder who [133] acquires title to the first is entitled to all the other parts.

The contract of each of the parties to a negotiable instrument is his own separate contract and is generally governed by the law of the place where such contract comes into existence. Thus, the liability of the maker or drawer of a foreign bill, note or cheque is regulated in all essential matters by the law of the place where the instrument is made, though the respective liabilities of the acceptor and indorser are governed by the law of the place where the instrument is made payable. What constitutes dishonour and what constitutes sufficiency of notice of dishonour is to be determined by the law of the place of payment. The law of any foreign country is presumed to be the same as that of British India, unless the contrary is proved, and the fact that any contract entered into beyond British India on a negotiable instrument is not valid by the law of that country, does not invalidate any agreement subsequently entered into within British India. [134] [135] [137] [136]

The general rules of evidence relating to negotiable instruments are those contained in the Evidence Act, but some special presumptions arising out of the peculiar incidents attached to negotiable instruments are set out in this Act. Those presumptions are, that unless the contrary is proved, every contract on a negotiable instrument was made for consideration and that every holder of a negotiable instrument is a holder in due course. If, however, the instrument is tainted by any offence or fraud at its inception or negotiation, or if it is taken for an unlawful consideration, the burden of proof lies upon the holder to show that he is a holder in due course. Presumptions are also enacted in favour of a negotiable instrument that it was drawn on the date it bears, that the acceptance was within a reasonable time after its date and before maturity, that the indorsements were made in the order in which they appear and also that they were made before maturity. A lost promissory note or bill of exchange or cheque is presumed to have been duly stamped. In a suit upon an instrument which has been dishonoured, the court shall, on proof of protest, presume the fact of dishonour. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument. [118] [119] [122]

BOOKS CONSULTED

Addison: Law of Contracts, XI Edn. (1911).

Ames, James Barr: Cases on Bills and Notes, Vols. I and II.

Brady: The Law of Forged and Altered Cheques (1925).

Brooke: Office and Practice of a Notary in England, VIII Edn. (1925).

Byles: Bills of Exchange, XIX Edn. (1931).

Chalmers: Bills of Exchange, IX Edn. (1927) and X Edn. (1932).
Negotiable Instruments Act, IV Edn. (1913).

Chitty: Bills of Exchange and Promissory Notes, XI Edn. (1878).

Daniel: Negotiable Instruments, VI Edn. (1919), Vols. I & II.

Dicey: Conflict of Laws, IV Edn. (1927).

Falconbridge: Banking and Bills of Exchange, IV Edn. (1929).

Foote: International Jurisprudence, V Edn. (1925).

Gilbert: Law of Banking.

Halsbury: Laws of England, II Edn. (1931).

Hart: Law of Banking, III Edn. (1914).

Maxwell: Interpretation of Statutes, VI Edn. (1920).

McPherson: Contracts, (1868) Edn.

Morse: Banking.

Paget: Law of Banking, IV Edn. (1932).

Parsons: Banking, II Edn. (1876).
Bills, Notes and Cheques.
Law of Promissory Notes and Bills of Exchange, Vols. I & II (1876).

Pollock: Principles of Contracts, IX Edn. (1921).

Rattigan: Digest of Customary Law, VI Edn. (1901).

Savigny: Conflict of Laws, II Edn. (1880).

Shaw: The Negotiable Instruments Act, (1882).

Shepherd: Contract Act, XI Edn. (1915).

Smith: Leading Cases, XIII Edn. (1929), Vols. I & II.

Stokes: Anglo-Indian Codes, (1887-1891), Vols. I & II.

Story: Conflict of Laws, VIII Edn. (1883).
Promissory Notes, Cheques, etc., III Edn. (1851).

Stroud: Judicial Dictionary, III Edn. (1931), Vols. I to IV.

Wharton: Conflict of Laws, III Edn (1905).

Williams: Executors, and Administrators, XI Edn. (1930), Vols. I & II.

BILLS OF EXCHANGE ACT, 1882.

(45 & 46 VICT. C. 61.)

Being an Act to codify the Law relating to Bills of Exchange, Cheques and Promissory Notes.

RECEIVED THE ROYAL ASSENT, 18TH AUGUST, 1882.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, as follows:

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the Bills of Exchange Act, 1882.

Interpretation of terms.

2. In this Act, unless the context otherwise requires,—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Banker" includes a body of persons, whether incorporated or not, who carry on the business of banking.

"Bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Issue" means the first delivery of a bill or note, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

PART II.

BILLS OF EXCHANGE.

Form and Interpretation.

Bill of exchange defined.

3. (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particluar fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional.

(4) A bill is not invalid by reason—

(*a*) That it is not dated;

(*b*) That it does not specify the value given, or that any value has been given therefor;

(*c*) That it does not specify the place where it is drawn or the place where it is payable.

Inland and foreign bills.

4. (1) An inland bill is a bill which is, or on the face of it purports to be (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2) Unless the contrary appears on the face of the bill the holder may treat it as an inland bill.

Effect where different parties to bill are the same person.

5. (1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Address to drawee.

6. (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

Certainty required as to payee.

7. (1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

What bills are negotiable?

8. (1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable.

9. (1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a*) With interest.

(*b*) By stated instalments.

(*c*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(*d*) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

Bill payable on demand.

10. (1) A bill is payable on demand—

(*a*) Which is expressed to be payable on demand, or at sight, or on presentation; or

(*b*) In which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

Bill payable at a future time.

11. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

Omission of date in bill payable after date, or acceptance after sight.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly:

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Presumption as to date being true date.

13. (1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

Ante-dating. and post-dating.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

Computation of time of payment.

14. Where a bill is not payable on demand the day on which it falls due is determined as follows:

Days of grace.

(1) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill, is due and payable on the last day of grace: Provided that—

(*a*) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day.

[34 & 35 Vict. c. 17.]

(*b*) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and

Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day.

(2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

(4) The term " month " in a bill means calendar month.

Case of need.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may think fit.

Special stipulations by drawer or indorser restricting liability.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1) Negativing or limiting his own liability to the holder.

(2) Waiving as regards himself some or all of the holder's duties.

Definition and requisites of acceptance.

17. (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely :—

(*a*) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(*b*) It must not express that the drawee will perform his promise by any other means than the payment of money.

Time for acceptance.

18. A bill may be accepted—

(1) Before it has been signed by the drawer, or while otherwise incomplete.

(2) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment

(3) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

General and qualified acceptances.

19. (1) An acceptance is either (*a*) general or (*b*) qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

(*a*) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated:

(*b*) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn:

(*c*) local, that is to say, an acceptance to pay only at a particular specified place:

An acceptance, to pay at a particular place, is a general acceptance, unless it expressly states that the bill is to be paid there only, and not elsewhere;

(*d*) qualified as to time:

(*e*) the acceptance of some one or more of the drawees, but not of all.

Inchoate Instruments.

20. (1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Delivery to complete contract.

21. (1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a*) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be; By whom.

(*b*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill. Conditional delivery.

But if the bill be in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved. Presumption as to delivery.

Capacity and Authority of Parties.

22. (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract. Capacity of parties.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2) Where a bill is drawn or indorsed by an infant, minor or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that— Signature essential to liability.

(1) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name.

(2) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. Forged or unauthorized signature.

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

Procuration signatures.

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

Person signing as agent or in representative capacity.

26. (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon ; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

The Consideration for a Bill.

Value and holder for value.

27. (1) Valuable consideration for a bill may be constituted by,—

(*a*) Any consideration sufficient to support a simple contract ;

(*b*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Accommodation bill or party.

28. (1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value, and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

Holder in due course.

29. (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions ; namely,

(*a*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact :

(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him, he had no notice of any defect in the title of the person who negotiated it.

Defects of title.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Presumption of value and good faith.

30. (1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

(2) Every holder of a bill is *prima facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills.

Negotiation defined.

31. (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(1) It must be written on the bill itself and be signed by the

indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself.

(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

(4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

Conditional indorsement.

33. Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

Indorsement in blank, and special indorsement.

34. (1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

Restrictive indorsement.

35. (1) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D only," or "Pay D for the account of X," or "Pay D or order for collection."

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his

indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorises him to do so.

(3) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Negotiation of overdue or dishonoured bills.

36. (1) Where a bill is negotiable in its origin, it continues to be negotiable until it has been (*a*) restrictively indorsed, or (*b*) discharged by payment or otherwise.

(2) When an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

Negotiation of bill to party already liable thereon.

37. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Rights of the holder.

38. The rights and powers of the holder of a bill are as follows :—

(1) He may sue on the bill in his own name :

(2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill :

(3) Where his title is defective (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

General Duties of the Holder

When presentment for acceptance is necessary.

39. (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

Time for presenting bill payable after sight.

40. (1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a resonable time.

(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Rules as to presentment for acceptance, and excuses for non-presentment.

41. (1) A bill is duly presented for acceptance which is presented in accordance with the following rules :—

(*a*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue :

(*b*) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only :

(*c*) Where the drawee is dead, presentment may be made to his personal representative :

(*d*) Where the drawee is bankrupt, presentment may be made to him or to his trustee :

(*e*) Where authorised by agreement or usage, a presentment through the post office is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(*a*) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill:

(*b*) Where, after the exercise of reasonable diligence, such presentment cannot be effected:

(*c*) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured, does not excuse presentment.

Non-acceptance.

42. When a bill is duly presented for acceptance, and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour by non-acceptance and its consequences.

43. (1) A bill is dishonoured by non-acceptance—

(*a*) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

(*b*) when presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances.

44. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time, express his dissent to the holder he shall be deemed to have assented thereto.

Rules as to presentment for payment.

45. Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented, the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:—

(1) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4) A bill is presented at the proper place : —

(*a*) Where a place of payment is specified in the bill and the bill is there presented.

(*b*) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.

(*c*) Where no place of payment is specified, and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence if known.

(*d*) In any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

(5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence, no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6) Where a bill is drawn upon, or accepted by two or more persons, who are not partners, and no place of payment is specified, presentment must be made to them all.

(7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8) Where authorised by agreement or usage, a presentment through the post office is sufficient.

Excuses for delay or non-presentment for payment.

46. (1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with,—

(*a*) Where, after the exercise of reasonable diligence presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(*b*) Where the drawee is a fictitious person.

(*c*) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(*d*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(*e*) By waiver of presentment, express or implied.

Dishonour by non-payment.

47. (1) A bill is dishonoured by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained, or (*b*) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorser accrues to the holder.

Notice of dishonour and effect of non-notice.

48. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

(1) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall, in the meantime, have been accepted.

Rules as to notice of dishonour.

49. Notice of dishonour in order to be valid and effectual, must be given in accordance with the following rules:—

(1) The notice must be given by or on behalf of the holder, or

by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2) Notice of dishonour may be given by an agent, either in his own name, or in the name of any party entitled to give notice, whether that party be his principal or not.

(3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders, and all prior indorsers who have a right of recourse against the party to whom it is given.

(4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A mis-description of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

(9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.

(10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(*a*) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;

(*b*) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter.

Agents.

(13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14) Where a party to a bill receives due notice of dishonour, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Excuses for delay in giving notice of dishonour.

50. (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with—

(*a*) When, after the exercise of reasonable diligence, notice, as required by this Act, cannot be given to or does not reach the drawer or indorser sought to be charged :

(*b*) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice :

(*c*) As regards the drawer in the following cases, namely—(1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment :

(*d*) As regards the indorser in the following cases, namely—(1) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

Noting of inland bill.

51. (1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

Protest of foreign bill.

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested, the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

Time of protest.

7 and 8 Geo. 5, C. 48.

(4) Subject to the provisions of this Act, when a bill is noted or protested, it may be noted on the day of its dishonour, and must be noted not later than the next succeeding business day.* When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Place of protest.

(6) A bill must be protested at the place where it is dishonoured: Provided that—

(*a*) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day.

(*b*) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(*a*) The person at whose request the bill is protested:

---

* The words "it must be noted on the day of its dishonour" were repealed, and the words "it may be noted on the day of its dishonour, and must be noted not later than the next succeeding business day", were introduced by the Bills of Exchange (Time of Noting) Act, 1917.

(*b*) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Duties of holder as regards drawee or acceptor.

52. (1) When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him.

(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid, the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties.

Funds in hands of drawee.

53. (1) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.

(2) In Scotland, where the drawee of a bill has in his hand funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

Liability of acceptor.

54. The acceptor of a bill, by accepting it—

(1) Engages that he will pay it according to the tenor of his acceptance:

(2) Is precluded from denying to a holder in due course:

(*a*) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(*b*) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness, or validity of his indorsement ;

(*c*) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of drawer or indorser.

55. (1) The drawer of a bill by drawing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured, he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;

(*b*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill, by indorsing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured, he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;

(*b*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements ;

(*c*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was, at the time of his indorsement, a valid and subsisting bill, and that he had then a good title thereto.

Stranger signing bill liable as indorser.

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

Measure of damages against parties to dishonoured bill.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows :—

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(*a*) the amount of the bill ;

(*b*) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case ;

(*c*) the expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

Re-exchange.

(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer, or

an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

Control over interest.

(3) Where by this Act interest may be recovered as damages, such interest may, if justice requires it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate, as interest proper.

Transferor by delivery and transferee.

58. (1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery."

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill.

Payment in due course.

59. (1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

Payment by drawer or indorser.

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(*a*) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(*b*) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

Banker paying demand-draft whereon indorsement is forged.

***60.** When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to

* The provisions of this section have been extended to any document issued by the Accountant-General which authorises the payment of money, in pursuance of the provisions in Part VI, (Funds in Court) of the Supreme Court of Judicature (Consolidation) Act, 1925, sec. 139 (15 & 16 Geo. 5, C. 49.)

show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

Acceptor, the holder at maturity.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Express waiver or renunciation.

62. (1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may, in like manner, be renounced by the holder before, at, or after its maturity ; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

63. (1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative ; but where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Alteration of bill.

64. (1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

What alterations are material.

(2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour.

65. (1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

Acceptance for honour *supra* protest.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

Acceptance for honour.

(3) An acceptance for honour *supra* protest in order to be valid must—

(*a*) be written on the bill, and indicate that it is an acceptance for honour:

(*b*) be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

66. (1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

Liability of acceptor for honour.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

67. (1) Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

Presentment to acceptor for honour or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by

any circumstance which would, excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

Payment for honour *supra* protest.

68. (1) Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest, or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payor for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payor for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6) The payor for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payor for honour in damages.

(7) Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments.

Holder's right to duplicate of lost bill.

69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

Action on lost bill.

70. In any action or proceeding upon a bill, the Court or a

Judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question.

Bill in a set.

Rules as to sets.

71. (1) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true holder of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws.

Rules where laws conflict.

72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows:

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made.

Provided that—

(a) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue.

(b) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

(2) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payor be interpreted according to the law of the United Kingdom.

(3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4) Where the bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight-drafts at the place of payment on the day the bill is payable.

(5) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III.

CHEQUES ON A BANKER.

Cheque defined.

73. A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Presentment of cheque for payment.

74. Subject to the provisions of this Act—

(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as

between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been, had such cheque been paid.

(2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

Revocation of banker's authority.

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(1) Countermand of payment:

(2) Notice of the customer's death.

Crossed Cheques.

22 & 23 Geo. 5. ch. 44.

* [Sections 76 to 82 of the Bills of Exchange Act, 1882 (which relate to crossed cheques), as amended by the Bills of Exchange (Crossed Cheques) Act, 1906, shall apply to a banker's draft as if the draft were a cheque.

For the purposes of this section, the expression "bankers draft" means a draft payable on demand drawn by or on behalf of a bank upon itself, whether payable at the head office or some other office of the bank.]

General and special crossings defined.

76. (1) Where a cheque bears across its face an addition of—

(a) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or

(b) Two parallel transverse lines simply, either with or without the words "not negotiable";

that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Crossing by drawer or after issue.

77. (1) A cheque may be crossed generally or specially by the drawer.

* Added by the Bills of Exchange (Amendment) Act, 1932.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally, the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally is sent to a banker for collection, he may cross it specially to himself.

Crossing a material part of cheque.

78. A crossing authorised by this Act is a material part of the cheque : it shall not be lawful for any person to obliterate, or, except as authorised by this Act, to add to or alter the crossing.

Duties of banker as to crossed cheque.

79. (1) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker as the case may be.

Protection to banker and drawer where cheque is crossed.

80. Where the banker on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection, being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed

in the same position as if payment of the cheque had been made to the true owner thereof.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Effect of "not negotiable" crossing on holder.

82. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Protection to collecting banker.

*A banker receives payment of a crossed cheque for a customer within the meaning of section 82 of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

[6 Edw. 7, ch. 17, s. 1.]

PART IV.

PROMISSORY NOTES.

83. (1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

Promissory note defined.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Delivery necessary.

85. (1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.

Joint and several notes.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

---

* Added by the Bills of Exchange (Crossed Cheques) Act, 1906.

Note payable on demand.

86. (1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment of note for payment to charge maker.

87. (1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of maker.

88. The maker of a promissory note by making it—

(1) Engages that he will pay it according to its tenor;

(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Application of Part II to notes.

89. (1) Subject to the provisions in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes; namely, provisions relating to—

(a) Presentment for acceptance;

(b) Acceptance;

(c) Acceptance *supra* protest;

(d) Bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V.

SUPPLEMENTARY.

Good faith.

90. A thing is deemed to be done in good faith within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

Signature.

91. (1) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Computation of time.

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

"Non-business days" for the purposes of this Act mean—

(a) Sunday, Good Friday, Christmas Day :

(b) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it : 34 & 35 Vict. ch. 17.

(c) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

When noting equivalent to protest.

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

Protest when notary not accessible.

94. Where a dishonoured bill or note is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule I to this Act may be used with necessary modifications, and if used shall be sufficient.

Dividend warrants may be crossed.

95. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

Repeal.

* **96.** The enactments mentioned in the second schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

Savings.

97. (1) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto, notwithstanding anything in this Act contained.

(2) The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(3) Nothing in this Act or in any repeal effected thereby shall affect—

33 & 34 Vict. ch. 97.

(a) The provisions of the Stamp Act, 1870, or Acts amending it, or any law or enactment for the time being in force relating to the revenue:

25 & 26 Vict. ch. 89.

(b) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint stock banks or companies:

(c) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively:

(d) The validity of any usage relating to dividend warrants, or the indorsement thereof.

Savings of summary diligence in Scotland.

98. Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect, the law and practice in Scotland in regard to summary diligence.

Construction with other Acts, etc.

99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

Parole evidence allowed in certain judicial proceedings in Scotland.

100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the

* This section and the schedule of repeals, having done their work, are now repealed as spent by the Statute Law Revision Act, 1898.

holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge to make such consignation, or to find such caution as the Court or Judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

SCHEDULES.

——:o:——

FIRST SCHEDULE.

Form of protest which may be used when the services of a notary cannot be obtained. Section 94

Know all men that I, A. B. [householder], of in the county of , in the United Kingdom, at the request of C.D., there being no notary public available, did on the day of 19 , at demand payment [*or* acceptance] of the bill of exchange hereunder written, from E. F., to which demand he made answer [state answer, if any] wherefore I now, in the presence of G. H. and J. K., do protest the said bill of exchange.

(Signed) A. B.

G. H. }
J. K. } Witnesses.

N. B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

SECOND SCHEDULE.

Enactments Repealed.

Session and Chapter.	Title of Act and extent of Repeal.
9 Will. 3, c. 17 ...	An Act for the better payment of Inland Bills of Exchange.
3 & 4 Anne, c. 8 ...	An Act for giving like remedy upon Promissory Notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.
17 Geo. 3, c. 30 ...	An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England.
39 & 40 Geo. 3, c. 42 ...	An Act for the better observance of Good Friday in certain cases therein mentioned.

SECOND SCHEDULE—(*contd.*)

Enactments Repealed—(*Contd.*)

Session and Chapter.	Title of Act and extent of Repeal.
48 Geo. 3, c. 88 ...	An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum in England.
1 & 2 Geo. 4, c 78 ...	An Act to regulate Acceptances of Bills of Exchange.
7 & 8 Geo. 4, c. 15 ...	An Act for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on Good Friday or Christmas Day.
9 Geo. 4, c. 24 ...	An Act to repeal certain Acts, and to consolidate and amend the laws relating to Bills of Exchange and Promissory Notes in Ireland. in part; that is to say, Sections two, four, seven, eight, nine, ten, and eleven.
2 & 3 Will. 4, c. 98 ..	An Act for regulating the protesting for non-payment of Bills of Exchange drawn payable at a place not being the place of the residence of the drawee or drawees of the same.
6 & 7 Will. 4, c. 58 ...	An Act for declaring the law as to the day on which it is requisite to present for payment to Acceptor, or Acceptors *supra* protest for honour, or to the Referee or Referees in case of need, Bills of Exchange which have been dishonoured.
8 & 9 Vict. c. 37, in part.	An Act to regulate the issue of bank notes in Ireland, and to regulate the repayment of certain sums advanced by the Governor and Company of the Bank of Ireland for the public service, in part; that is to say, Section twenty-four.
19 & 20 Vict. c. 97, in part.	The Mercantile Law Amendment Act, 1856, in part; that is to say, Sections, six and seven.
23 & 24 Vict. c. III, in part.	An Act for granting to Her Majesty certain duties of stamps, and to amend the laws relating to the stamp duties, in part; that is to say, Section nineteen.
34 & 35 Vict. c 74 ...	An Act to abolish days of grace in the case of Bills of Exchange and Promissory Notes payable at sight or on presentation.
39 & 40 Vict. c. 81 ..	The Crossed Cheques Act, 1876.
41 & 42 Vict. c. 13 ...	The Bills of Exchange Act, 1878.

Enactment repealed as to Scotland

19 & 20 Vict. c. 60, in part.	The Mercantile Law (Scotland) Amendment Act, 1856. in part; that is to say, Sections ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen.

Table showing sections of the Bills of Exchange Act corresponding to sections of the Negotiable Instruments Act.

Indian Act	English Act.	Indian Act.	English Act.
1 ...	1	41 ...	See 54 (2).
2 (Repealed) ..	...	42 ..	„ 7 (3), 54 (2).
3 ...	2	43	27 (2), 28 (1) (2).
4 ...	83 (1)	43 Exc. (1) ...	59 (3)
5 paras. 1, 3 & 4. ...	3 (1), 6 (1), 7 (1), 9 (1), (*a*), (*c*), (*d*)	44 ...	...
		45 ...	...
„ para 2 ...	3 (1), 11	45-A ..	69.
		46, para. 1 ...	21 (1).
6 ...	73	„ „ -2 ...	„ (2) (*a*).
7, para. 1 ...	...	„ „ 3 ...	„ (2) (*b*).
„ „ 2 ...	15	„ „ 4 ...	21, 31 (2).
„ „ 3 ...	17 (1), 65 (1)	„ „ 5 .	31 (3).
„ „ 4 ...	65 (1)	47 ...	31 (2).
„ „ 5 ...		48 ...	31 (3).
8 ...	2	49 ...	34 (4).
9 ...	29	50 ...	35 (1).
10 ...	59 (1) para. 2	51 ...	32 (3).
11 ...	4 (1), 83 (4)	52 ...	See 16 (1).
12 ...	4 (1), 83 (4)	53 ...	29 (3).
13 ...	8	54 ...	34 (1).
14 ...	31 (1) (2) (3)	55 ...	8 (3), 34 (4).
15 ...	32 (1), (56)	56 ..	32 (2)
16 (1) ...	34 (1) (2) (3)	57 ...	...
16 (2) ...	34 (3)	58 ..	29 (2) 38 (2), (3)
17 ...	5 (2)		
18 ...	9 (2)	59 ...	36 (2) (5).
19 ...	10 (1) (*b*)	60 ...	36 (1).
20 ...	20	61, para. 1 ...	39 (1) (2).
21 ...	10 (1) (*a*), 11 (1)	„ „ 2 ...	41 (2) (*b*).
22, para. 2 ...	14 (1)	„ „ 3 ...	39 (2).
23 ...	14 (2) (3) (4), 65 (5).	„ „ 4 ...	41 (1) (*e*).
24 ...	14 (2) (3)	62 ...	See 39 (1) 89, (1) (3) (*a*).
25 ...	14 (1) (*a*) (*b*)	63 ...	See 42
„ Expla. ...	92	64 ...	45, 87 (2).
26, para. 1 ...	22 (1) para. (1)	65 ..	45 (3).
„ „ 2 ...	„ (2)	66 ...	45 (1).
„ „ 3 ...	„ (1) para. 2	67 ...	...
27 ...	25, 26	68 ...	45 (4), 87.
28 ...	26 (1)	69 ...	45 (4) (*a*), 87.
29 ...	26 (1)	70 ...	45 (4) (*c*).
30 ...	55 (1)	71 ...	45 (4) (*b*) (*d*).
31 ...	See 74	72 ..	74 (1).
32 ...	54 (1), 88 (1)	73 ...	45, 73, see also 74.
33 ...	See 17 (1), 53	74 ...	45 (2).
34 ...	„ 19 (*e*)	75 ...	41 (1) (*a*) (*c*) (*d*).
35 ...	55 (2) (*a*)		45 (3) (7).
„ para. 2 ...	10 (2)	75-A ...	46 (1).
36 ...	57	76 (*a*) ...	45 (5).
37 ...	...		
38 ...	...	„ (*b*) ...	See 46 (2) (*e*).
39 ...	...	„ (*c*) ...	46 (2) (*e*)
40 ...	See 63 (2)	„ (*d*) ...	46 (2) (*c*).

Indian Act.	English Act	Indian Act.	English Act.
77 ...	...	106, para. (1) ...	49 (12) (*b*).
78 ...	59 (1)	„ „ (2) ...	49 (12) (*a*).
79 ...	See 9 (3)	107 ...	49 (14).
80 ...	See 57 (3)	108 ...	65 (1).
81 ..	52 (4), 69	109 ...	65 (3).
	...	110 ...	65 (4).
82 (*a*) ...	63 (1) (2)	111, para. (1) ...	66
„ (*b*) ..	62	„ „ (2) ...	67 (2).
„ (*c*) ...	59	112 ...	67 (1).
83 ...	42	113 ...	68 (1) (3) (4).
84 ...	74	114 ...	68 (5).
85 ..	60	115 ...	15
85 (-A)	22 & 23 Geo. 5 ch. 44.	116 ...	See 67 (1).
		117 ...	57.
86 ...	44 (1) (2)	118 (*a*) ...	30 (1).
„ Expl. ...	19	„ (*b*) ...	13 (1).
87 ...	64	„ (*c*) ...	...
88 ...	See 64 (1)	„ (*d*) ...	36 (4).
89, paras 1, 3 ...	64 (1) proviso	„ (*e*) ...	32 (5).
„ „ 2, 3 ...	79 proviso	„ (*f*) ...	...
90 ...	61	„ (*g*) ...	30 (2).
91. para. (1) ...	43 (1)	119 ...	...
„ „ (2) ...	41 (2) (*a*)	120 ...	55 (1) (*b*): see also
92 ...	47 (1)		54 (2) (*a*) (*b*).
93 para. (1) ...	48, 49 (1)	121 ..	54 (2) (*c*), 88 (2).
„ „ (2) ...	52 (3)	122 ...	55 (2) (*b*) (*c*).
94 „ (1) ...	49 (5) (8) (9) (10) (12)	123 ...	76 (1).
„ „ (2) ...	49 (15)	124 ...	76 (2).
95 ...	49 (14)	125, para. 1 ...	77 (2).
96 ...	49 (13)	„ „ 2 ...	77 (3).
97 ...	49 (9)	„ „ 3 ...	77 (4).
98 (*a*) ...	50 (2) (*b*)	„ „ 4 ...	77 (5).
„ (*b*) ...	50 (2) (*c*), (5)	126 ...	79 (2).
„ (*c*) ...	50 (2) (*c*), (4)	127 ...	79 (1).
„ (*d*) ...	50 (1)	128 ...	80.
„ (*e*) ...	50 (2) (*c*) (*i*)	129 ..	79 (2).
„ (*f*) ...	...	130 ...	81.
„ (*g*) ...	50 (2) (*b*)	131 ...	82.
99 ...	51 (1)	132, para. 1 ...	71 (1) (6).
100, para. 1 ...	51 (2)	„ Exc. ...	71 (2).
„ „ 2 ...	51 (5)	133 ...	71 (3).
101 ...	51 (7)	134 ...	72 (1) (2).
102 ...	...	135 ...	72 (3).
103 ..	51 (6) (*b*)	136 ...	72 (1) (*b*).
104 ...	51 (2)	137 ..	...
104-A ..	93	138 ...	...
105 ...	45 (2), 49 (12), 74 (2) 86 (2).	139 ...	...

LIST OF ABBREVIATIONS.

A. C.	...	Law Reports, Appeal Cases
A. I. R.	...	All India Reporter
A. L. J.	...	Allahabad Law Journal
A. W. N.	...	Allahabad Weekly Notes
A. & E	...	Adolphus and Ellis, Queen's Bench & King's Bench
Agra	...	Agra High Court Reports
Ames I & II	...	Cases in Bills & Notes by James Barr Ames, Vol. I & II
All.	...	Allahabad Series (Indian Law Reports)
Asp. M. C.	...	Aspinall's Maritime Law Cases
Atk.	...	Atkyns, Chancery
B. H. C. R.	...	Bombay High Court Reports
B. L. R.	...	Bengal Law Reports
B. & Ad.	...	Barnewell and Adolphus, King's Bench
B. & Ald. or B. & A.	...	Barnewell and Alderson, ,, ,,
B. & C.	...	Barnewell and Cresswell, ,, ,,
Beav.	...	Beavan, Roll's Court
Bing.	...	Bingham, Common Pleas
Bing. N. C.	...	Bingham's New Cases, Common Pleas
Bligh.	...	Bligh's Reports, House of Lords
Bom.	...	Bombay Series (Indian Law Reports)
Bom. L.R.	...	Bombay Law Reporter
Bos. & P.	...	Bosanquet and Puller, Common Pleas
Bro. & B.	...	Broderip and Bingham, Common Pleas
Bur. L. J.	...	Burma Law Journal
Bur. L. T.	...	Burma Law Times
Burr.	...	Burrow, King's Bench
C. A.	...	Court of Appeal
C. B.	...	Common Bench Reports, Common Pleas
C. B. N. S.	...	Common Bench Reports (New Series) Common Pleas
C. L. J.	...	Calcutta Law Journal
C. L. R.	...	Calcutta Law Reports
C. M. & R.	...	Crompton, Meeson & Ruscoe's Reports, Exch.
C. P.	...	Common Pleas
C. P. D.	...	Law Reports, Common Pleas Division.
C. W. N.	...	Calcutta Weekly Notes
C. & J.	...	Crompton and Jervis, Exch.
C. & P.	...	Carrington and Payne, Nisi Prius
Cab. & E.	...	Cababe and Ellis, Queen's Bench
Cal.	...	Calcutta Series (Indian Law Reports)
Camp.	...	Campbell, Nisi Prius

Car. & K.	...	Carrington and Kirwan, Nisi Prius
Car. & M.	...	Carrington and Marshman's Reports, Nisi Prius
Carth.	...	Carthew's Reports, King's Bench
Ch.	...	Chancery
Ch. App.	...	Law Reports, Chancery Appeals
Ch. D.	...	Law Reports, Chancery Division
Chitty.	...	Chitty's Practice Reports, King's Bench
Cl. & F.	...	Clark and Finnelly, House of Lords
Comb.	...	Comberbach's Reports, King's Bench
Comyn.	...	Comyns' digest
Cox.	...	Cox, Chancery
Cox. C. C.	...	Cox's Criminal Law Cases
Cr. & M.	...	Crompton and Meeson's Reports, Exchequer
D. & L.	...	Dowling and Lowndes' Practice Reports
D. & R	...	Dowling and Ryland, King's Bench
De G. J. & S.	...	De Gex, Jones, and Smith, Chancery
De G. M. & G.	...	De Gex, Macnaghten and Gordon, Chancery
De G. & J.	...	De Gex and Jones, Chancery
De G. & Sm.	...	De Gex and Smale, Chancery
Doug.	...	Douglas, King's Bench
Dowl.	...	Dowling's Practice Reports
Dr. & S.	...	Drury and Smale's Reports, Chancery
E. R.	...	English Reports
E. & B.	...	Ellis and Blackburn, Queens Bench
East	...	East's Reports, King's Bench
Esp.	...	Espinasse, Nisi Prius
Ex.	...	Exchequer Reports
Ex. D.	...	Law Reports, Exchequer Division
Gale.	...	Gale's Reports, Exchequer
Giff.	...	Giffard, Chancery
H. L.	...	House of Lords
H. L. C.	...	Clark's Reports, House of Lords
H. Bl.	...	Henry Blackstone's Reports, Common Pleas
H. & C.	...	Hurlstone and Coltman, Exch.
H. & H.	...	Horn and Hurlstone, Exch.
H. & N.	...	Hurlstone and Norman, Exch.
Hare	...	Hare's Reports, Chancery
Holt.	...	F. Holt's Reports, Nisi Prius
Hyde	...	Hyde's Reports, Common Pleas
I. A.	...	Indian Appeals
I. C.	...	Indian Cases
Ind. Jur.	...	Indian Jurist
Ir. Eq. R.	...	Irish Equity Reports
Jac & W.	...	Jacob and Walker's Reports, Chancery
Jur.	...	The Jurist Reports (English)
K. B.	...	King's Bench

K. & J.	...	Kay and Johnson, Chancery
L. B. R.	...	Lower Burma Reports
L. J. C. P.	...	Law Journal, Common Pleas
L. J. Ch.	...	Law Journal, Chancery
L. J. Ex.	...	,, Exchequer
,, P. C.	...	,, Privy Council
,, Q. B.	...	,, Queen's Bench
L. R.	...	Law Reports
L. R. H. L.	...	Law Reports, House of Lords
L. T.	...	Law Times
L.W.	...	Madras Law Weekly
Lah.	...	Lahore Series (Indian Law Reports)
Ld. Raym.	...	Lord Raymond's Reports (K. B. & C. P.)
Lev.	...	Levinz, K. B. and C. P.
M. H. C. R.	...	Madras High Court Reports
M. I. A.	...	Moore's Indian Appeals (P. C.)
M. L. J.	...	Madras Law Journal
M. L. T.	...	Madras Law Times
M. W. N.	...	Madras Weekly Notes
M. & Gr.	...	Manning and Granger, C. P.
M. & M.	...	Moody and Malkin, Nisi Prius
M. & P.	...	Moore and Payne, Common Pleas
M. & S.	...	Maule and Selwyn, King's Bench
M. & W.	...	Meeson and Welsby, Exch.
Macq. H. L.	...	Macqueen's Sctotch Appeals, H. L.
Mad.	...	Madras Series, Indian Law Reports
Marsh.	...	Marshall, C. P.
Moo. P. C.	...	Moore's Privy Council Cases
Moo. & M.	...	Moody and Malkin, Nisi Prius,
Moo. & R.	...	Moody and Robinson, Nisi Prius
Moore.	...	Moore's Reports, Common Pleas
Myl. & Cr.	...	Mylne and Craig, Chancery
Myl. & K.	...	Mylne and Keen, Chancery
N. L. R.	...	Nagpur Law Reports
N. W. P. H. C. R.	...	North-West Provinces High Court Reports
N. Y. R.	...	New York Reports
N. I. R.	...	Northern Ireland Law Reports
N. & M.	...	Nevile and Manning. King's Bench
N. & P.	...	Neville and Perry. King's Bench
O. C.	...	Oudh Cases
P.	...	Law Reports, Probate
P. C.	...	Privy Council,
P. D.	...	Law Reports, Probate Division.
P. L. R.	...	Punjab Law Reports
P. R.	...	Punjab Record
P. & D.	...	Perry and Davison, Queen's Bench
Peak	...	Peake's Reports, Nisi Prius
Price	...	Price's Reports, Exch.
Q. B.	...	Law Reports Queen's Bench
Q. B. D.	...	Law Reports, Queen's Bench Division
R. R.	...	Revised Reports

Rang.	...	Rangoon Series (Indian Law Reports)
Ry. & M.	...	Ryan and Moody, Nisi Prius
S. J. or Sol. Jour.	...	Solicitor's Journal
S. L. R.	...	Sindh Law Reports
Salk.	...	Salkeld's Reports King's Bench
Sch. & Lef.	...	Schoales and Lefroy, Chancery (Ireland)
Scott	...	Scott's Reports, Common pleas
Sel. N. P.	...	Selwyn, Law of Nisi Prius
Show.	...	Shower, King's Bench
Sm. L. C.	...	Smith's Leading Cases
Sm. & G.	...	Smale and Giffard, Chancery
Stark.	...	Starkie's Reports, Nisi Prius
T. L. R.	...	Times Law Reports
T. R.	...	Term Reports
Tyr.	...	Tyrwhitt, Exch.
U. B. R.	...	Upper Burma Reports
Vent.	...	Ventris, K. B. & C. P.
Ves.	...	Vesey's Reports, Chancery.
Ves. Jr.	...	Vesey Junior, Chancery.
W. R.	...	Weekly Reporter (Indian) Sutherland
W. R.	...	Weekly Reporter (English)
W. W. & H.	...	Willmore, Wollaston and Hodges, B.
W. Bla.	...	Sir Wm. Blackstone, K. B & C. P.
Willes	...	Willes' Reports, Common Pleas
Wils.	...	Wilson's Reports, K. B. & C. P.
Y. & C.	...	Younge and Collyer, Ex. in Eq.

TABLE OF CASES CITED

PAGE.

A

A. G. of Bengal v. Juggeswar Roy, 3 Cal. 192: 1 C.L.R. 107: 3 Suth. 455 (P.C.) ... 65
A. G. of Bengal v. Kristo Kamini Dassee, 31 Cal. 519: 8 C.W.N. 500 26
Abaji Sitaram v. Trimbak Municipality, 28 Bom. 66: 5 Bom. L.R. 689 120
Abbott v. Hendricks, (1840) 1 M. & Gr. 791: 10 L.J.C.P. 51: 133 E.R. 551 ... 201
Abboy Chetti v. Ramachandra Rao, 17 Mad. 461 ... 230
Abdoor Rahman v. Baboo Ganesh Lall, 23 W.R. 444 ... 184
Abdul Ghani Khan v. Abdul Majid Khan, 21 I C. 199 ... 30
——Hakim v. Ebrahim Sulaiman, 33 C.L.J. 132: 6 I.C. 210 ... 36, 329, 541
Abid Husain v. Asghar Husain, 11 A.L.J. 506: 19 I.C. 445 ... 597
Abinash v. Nagendra, (1931) Cal 480: 134 I.C. 575: 53 C.L.J. 254. 598
——Chandra v. Bama Bewa, 13 C.W.N. 1010: 4 I.C. 17 ... 566
Abiraj Kuar v. Data Din, (1924) Oudh 106: 73 I.C. 465 ... 35
Abraham Servai v. Raphial Muthirian, 27 M.L.J. 746: 16 M.L.T. 569: 27 I.C. 337 ... 33
Abrey v. Crux, (1869) L.R. 5 C.P. 37: 39 L.J.C P. 9: 21 L.T. 377: 18 W.R. 63 ... 217, 346
Absolon v. Marks, (1847) 11 Q.B. 19: 17 L.J.Q.B. 7: 10 L.T. 133: 11 Jur. 1016: 116 E.R. 381 ... 37
Adelphi Bank v. Edwards, *quoted in* (1896) A.C. at 540 ... 361
Adiraja v. Villal, 1 L.W. 300: (1914) M.W.N. 322: 23 I.C. 540 ... 260
Aga Ahmed v. Crisp, 19 I.A. 24: 19 Cal. 242 (P.C.) ... 196
——Ispahani v. Judith Emma Crisp, 19 Cal. 242: 19 I. A. 24: 6 Sar. 109 (P.C.) ... 182, 196
Agarchand v. Viraraghavalu Chetti, 3 M.H.C.R. 172 ... 258
Agra and Masterman's Bank, *Ex parte*, London and Mediterranean Bank, *In re*, (1871) L. R. 6 Ch. App. 206: 24 L. T. 376: 19 W.R. 486 ... 80, 128
——*In re*, (1867) L.R. 2 Ch. App. 391: 36 L.J. Ch. 222: 16 L.T. 162. 48
——v. Leighton, (1866) L.R. 2 Ex. 56: 36 L.J. Ex. 33: 4 H. & C. 656. 208, 209
Agra Bank *Re* Tondeur, *Ex parte*, (1867) L.R. 5 Eq. 160, 37 L.J. Ch. 121: 16 W.R. 270 ... 279
Ahmed Moola Dawood v. Periannan Chetti Firm, 3 Bur L. J. 22 ... 481
Ainsworth v. Creke, (1869) L. R. 4 C.P. 476: 38 L. J. C.P. 58: 19 L.T. 824: 17 W.R. 229 ... 135
Aiyathurai Iyer v. Dharmasiva Iyer, 35 Mad. 558: 9 M.L.T. 205: 8 I.C. 843 ... 140
Ajodhya Jha v. Cox, 48 I.C. 701 (Pat.) ... 62
Ajudiah Prasad v. Lalman, 25 All. 38: (1902) A.W.N. 178 ... 261

PAGE.

Ajudhia Prasad v. Ricknath, 50 All. 764 : 114 I.C. 190 : (1928) All. A.L.J. 535 ...15, 17, 30, 572
Akhoy Kumar Pal v. Hari Doss Bysack, 18 C. W. N. 494 : 19 C.L.J. 335 : 22 I.C. 500 10, 80, 230, 541, 542
Akrokerri(Atlantic)Mines, Ltd., v. Economic Bank,(1904)2 K.B. 465: 73 L.J.K.B, 742 : 91 L.T. 195 : 48 S.J. 545 : 20 T.L.R. 564. 160, 476, 477, 491
Alagappa v. Karuppayya, 3 M.L.T. 239 ... 60
——v. Narayanan, 63 M.L.J. 548 ... 91, 580, 598
——Chetti v. Alagappa Chetti, 44 Mad. 187 : 39 M.L.J. 573 : 60 I.C. 130 : (1921) Mad. 382 ... 15, 474
Alagirisami v. Ramanathan, 56 M.L.J. 399 : 29 L.W. 551 : (1929) Mad. 284 : 115 I.C. 830 ... 112
Alams Banee v. Mahomed Ruja, 6 Cal. 239 : 6 C.L.R. 553 ... 105
Alcock v. Alcock, (1841) 3 M. & Gr. 268 : 133 E.R. 1144 ... 473
——v. Smith, (1892) 1 Ch. 238 ... 506
Alderson v. Langdale, (1832) 3 B.& Ad. 660 : 1 L.J.K.B. 273 : 110 E. R. 241 : 37 R.R. 513 ... 382
Aldous v. Cornwell, (1868) L.R. 3 Q.B. 573 : 9 B. & S. 607 : 37 L.J. Q.B. 201 : 16 W.R. 1045 ... 371, 380
Alexander v. Burchfield, (1842) 7 M. & Gr. 1061 : 3 Scott. N.R. 555 : Car. & M. 75 : 11 L.J.C.P. 253 : 135 E.R. 431 ... 392, 433
——v. Mackenzie, (1848) 6 C.B 766 : 18 L.J.C.P. 94 : 136 E.R. 1449 : 13 Jur. 346 ... 122, 138
——v. Sizer, (1869) L.R. 4 Ex. 102 : 38 L.J. Ex. 59 : 20 L.T. 38 ... 139
——v. Thomas, (1851) 16 Q.B. 333 : 20 L.J.Q.B. 207 : 15 Jur. 173 : 83 R.R. 482 : 117 E.R. 906 ... 43
——Stewart v. Delhi & London Bank, Ltd., 17 W.R. 201 ... 536
Ali Mahomed v. Vadi Lal, 43 Bom. 890 : 53 I.C. 197 ... 116
——Mohammad v. Jagannath, (1928) All. 666 : 26 A.L.J. 823 ... 588
Alice Mary Hill v. William Clarke, 27 All. 266 : 1 A.L.J. 632 ... 258
Alimane Sahiba v. Kolisetti Subbarayudu, 36 L W. 470 ... 595, 596, 597
Allan v. Mawson, (1814) 4 Camp. 115 ... 30, 91
Allcard v. Walker, (1896) 2 Ch. 369 : 65 L.J. Ch. 660 : 74 L.T. 487 : 44 W.R. 661 ... 332
Allen v. Edmundson, (1848) 2 Ex. 719 : 2 Car. & K. 547 : 17 L.J. Ex. 291 : 76 R.R. 749 : 154 E.R. 680 280, 399, 402
——v. Kemble, (1848) 6 Moo. P.C. 314 : 13 Jur. 287 : 79 R.R. 66 : 13 E.R. 704 ... 424, 507, 508
——v. Royal Bank of Canada, 95 L.J. (1925) P.C. 17: 41 T.L.R. 625 : 134 L.T. 194 ... 533
——v. Sea, Fire and Life Assurance Co., (1850) 9 C.B. 574 : 14 Jur. 870 (n) : 137 E.R. 1015 ... 90, 414
Alliance Bank v. Kearsley, (1871) L.R. 6 C.P. 433 : 40 L.J.C.P. 249 : 24 L.T. 552 : 19 W.R. 822 ... 128
——of Simla, *In re*, 40 C.L.J. 223 ... 471, 472, 494
Ambica Charan v. Kalipada Bhatacharya, 110 I.C. 747 : 40 Cal. 191. 607
Amerchand & Co v. Ramdas Vithaldas, 38 Bom. 255 : 16 Bom. L.R. 525 affirmed in 40 Bom. 630 : 24 C.L.J. 820 : 31 M.L.J. 541 : 20 C.W.N. 1182 : 14 A.L.J. 1045 : 4 L.W. 342 : (1916) 2 M.W.N. 110 : 18 Bom. L.R. 670 : 20 M.L.T. 194 : 35 I.C. 954 : 43 I.A. 164 : (1916) P.C. 7 ... 12

TABLE OF CASES CITED

PAGE.

Amina Begam v. Nawab of Rampur, 33 All. 571 : 10 I.C. 247 : 8 A.L.J. 566 ... 508, 580
Amirtham Pillai v. Nanjah Gownden, 26 M.L.J. 257 : 1 L.W. 243 : (1914) M.W.N. 250 : 15 M.L.T. 205 : 23 I.C. 464 ... 33, 376
Amiruddi Bepari v. Bahadoor Khan, 30 Cal. 977 : 7 C.W.N. 878 ... 152, 416
Ammalu v. Namagiri, 33 M.L.J. 631 : 22 M.L.T. 391 : (1918) M.W.N. 110 : 6 L.W. 722 : 43 I.C. 760 132, 142, 144, 145, 547, 596
Ammayee v. Yalumalai, 15 Mad. 261 ... 32
Amner v. Clark, (1835) 2 Cr. M. & R. 463 : 1 Gale 191 : 5 Tyr. 942 : 4 L.J. Ex. 254 : 41 R.R. 777 : 150 E.R. 202 ... 75
Anandji Visram v. Nariad Spinning and Weaving Co., Ltd., 1 Bom. 320 ... 375
Anant Ram v. National Bank of Upper India, (1922) Oudh. 20 : 66 I.C. 116 ... 146
Anantayya v. Padmayya, 16 Mad. 278 : 2 M.L.J. 247 ... 260
Anantha Rao v. Surayya, 43 Mad. 703 : 38 M.L.J. 256 ... 382
Anantkrishna v. Saraswati, 30 Bom. L.R. 709 : (1928) Bom. 316 : 111 I.C. 556 ... 33, 62, 111
Ancher v. Bank of England, (1781) 2 Doug. 637 : 99 E.R. 404 ... 238
Ancona v. Marks, (1862) 7 H. & N. 686 : 31 L.J. Ex. 163 : 158 E.R. 645 : 5 L.T. 753 : 8 Jur. (N.S.) 516 ... 219, 541
Anderson v. Hilles, (1852) 12 C.B. 499 : 21 L.J.C.P. 150 : 16 Jur. 819 : 138 E.R. 1002 ... 317, 534
Anderton v. Beck, (1812) 16 East. 248 : 14 R.R. 344 : 104 E.R. 1083. 307, 321
Angad Singh v. Srinath Das, 3 I.C. 403 (All.) ... 111
Anglo-India Jute Mills Co. v. Omade Mull, 38 Cal. 127 : 10 I.C. 859. 12
Anglo-Indian Trading Co. v. G. F. Brierly, 9 M.L.T. 17 : 8 I.C. 302 : (1910) M.W.N. 618 ... 64
Ankur Chunder Roy v. Madhub Chunder Ghose, 21 W. R. 1 ... 596
Annamalai v. Maung Shaing, (1927) Rang. 161 : 103 I. C. 139 : 5 Bur L.J. 241 ... 271, 274
——v. Muthia, (1922) M.W.N. 263 : (1922) Mad. 210 ... 241
——Chetty v. Velayuda Nadar, 39 Mad. 129 : 30 M. L. J. 51 : 19 M.L.T. 62 : 3 L.W. 398 : (1916) 1 M W.N. 93 : 32 I.C. 869 (F.B.) 94, 167, 347, 532
Annapurnamma v. Akkayya, 36 Mad. 544 : 24 M. L. J. 333 : 13 M.L.T. 268 : (1913) M.W.N. 328 : 19 I.C. 12 (F.B.) ... 327, 347
Antonisami v. Gnanaprakasam, 12 L.W. 582 ... 59, 542
Anunt Ram Agurwalla v. Nuthall, 21 W.R. 62 ... 398, 438
Appa v. Ramunni, 13 L.W. 183 : (1921) Mad. 122 : (1920) M.W.N. 600 : 59 I.C. 943 ... 79
Appaswami Aiyangar v. Ramanatham Chettiar, 30 Mad. 167 : 2 M. L. T. 30 ... 174
Appavoo v. S. I. R. Co., 56 M. L. J. 269 ... 316
Appleton v. Sweetapple, (1783) 3 Doug. (K.B.) 137 ... 431
Archer v. Bomford, (1822) 3 Stark. 175 : 1 L.J. (O.S.) K.B. 228 ... 257
Arden v. Watkins, (1803) 3 East. 317 : 102 E.R. 619 ... 116
Ardeshir Sorabsha Moos v. Khushaldas, 32 Bom. 247 10 Bom. L.R. 268 53, 54, 248, 290, 453, 506

PAGE.

Argoll v. Cheney, (1625) Palm. 403 ... 371
Ariadne Steamship Co. v. James McKalvie & Co., (1922) 1 K.B. 518. 138
Arnold v. Cheque Bank, (1876) 1 C.P.D. 578 : 45 L.J.C.P. 562 : 34 L.T. 729 : 24 W.R. 759 216, 218, 223, 254, 362, 363
——Karberg & Co. v. Blythe, Green etc. Co., (1915) 2 K.B. 379 ... 165
Arnote v. Holden, (1852) 18 Q.B. 583 ... 565
Arthur v. Clarkson, (1865) 35 Beav. 458 : 14 W.R. 754 : 55 E.R. 974. 201
Arunachalam Chettiar v. Krishna Aiyer, 49 M.L.J. 530 : 22 L.W. 265 : 90 I.C. 481 : (1925) M.W.N. 324 : (1925) Mad. 1168 ... 209
Arunachelam v. Narayana, 42 Mad. 470 ... 15, 474
Arunachella Reddi v. Subba Reddi, 17 M.L.J. 393 : 3 M.L.T. 7 ... 80, 229, 542
——v. Jagannath, 24 L.W. 659 ... 543
Arunachellam Chetti v. Subramanian Chetti, 30 Mad. 235 : 17 M.L.J. 87 ... 272
Ashton v. Freeston, (1840) 2 M. & Gr. 1 ... 347
Ashurst v. Royal Bank of Australia, (1856) 27 L.T. (O.S.) 168 ; 4 W.R. 601 ... 268
Askaran Baid v. Pir Bux, 8 C L.J. 163 : 12 C.W.N. 644 ... 188
Aspinall v. Wake, (1833) 10 Bing. 51 : 3 M. & S. 423 : 2 L.J.C.P. 227: 131 E.R. 824 ... 146
Assaram Motiram, *In re*, (1929) Sindh 164 ; 116 I.C. 111 ... 35
Atkins v. Owen, (1834) 4 N. & M. 123 ... 329
Atkinson v. Hawdon, (1835) 2 A. & E. 628 : 4 N. & M. 409 : 1 H. & W. 77 : 4 L.J.K.B. 85 : 41 R.R. 493 : 111 E. R. 242 ... 383
Atmaram v. Banku Mal. (1930) Lah. 561 : 125 I.C. 369 : 11 Lah. 598, 131
——v. Notandas, (1930) Sindh. 4 : 126 I.C. 741 130, 133, 138, 465
——v. Umedram, 25 Bom. 616 : 3 Bom. L.R. 213 ... 370, 372
Attar Singh v. Moolchand, (1927) Lah. 876 ... 597
Attenborough v. Mackenzie, (1856) 25 L.J. Ex. 244 : 105 R.R. 348. 73 152, 274, 326
Attorney General v. Birkbeck Bank, (1884) 12 Q.B.D 605 ... 16
——v. Brodie, 4 M.I.A. 190 : 6 Moo. P.C. 12 : 11 Jurist. 137 : 1 Sar. 335 : 13 E.R. 586 ... 10
——v. Pratt, (1874) L.R. 9 Ex. 140 : 43 L.J. Ex. 108 : 30 L.T. 531 : 22 W.R. 615 ... 54
Attwood v. Griffin, (1826) 2 C. & P. 368 : Ry. & M. 425 : 31 R.R. 669. 38, 377, 380
——v. Munnings, (1827) 7 B. & C. 278 : 1 Man. & R. 66 : 108 E. R. 727 : 6 L.J. (O.S.) K.B. 9 : 31 R.R. 194 ... 122, 125, 138
——v. Rattenbury, (1822) 6 Moore 579 : 23 R.R. 633 ... 249
Auchteroni & Co. v. Midland Bank, (1928) 2 K.B. 294 : (1929) W.N. 103 : 44 T.L.R. 441 : 97 L.J.K.B. 625 : 139 L. T. 344 : 33 Com. Cas. 345 48, 52, 159, 357, 369
Auriol v. Thomas, (1787) 2 T.R. 52 : 106 E.R. 29 ... 456
Awde v. Dixon, (1851) 6 Ex. 869 : 20 L.J. Ex. 295 : 86 R.R. 523 : 155 E.R. 798 ... 69, 95, 99
Ayerst v. Jenkins, (1873) L.R. 16 Eq. 275 ... 258
Ayrey v. Fearnsides, (1838) 4 M. & W. 168 : 1 H & H. 202 : 7 L.J. Ex. 288 : 6 D.P.C. 654 : 51 R.R. 515 : 150 E.R. 1388 ... 34, 46
Ayyathurai Ayyar v. Sivarama Pattar, 32 I.C. 233 (Mad.) ... 527

B

PAGE.

Babaji Bin Lakshman v. Maruthi Bin Raghoji, 7 B.H.C.R. 77 (A.C.J.) 105
Baboo Lal v Joy Lall, 24 Cal. 533 ... 257, 596
Babu Goridut v. Ibrahim, 14 Bur. L R. 25 ... 80, 229, 236
——Ram v. Dasuri Ram, 19 I.C. 840 ... 596
——Ram v. Jodha Singh, 11 A.L.J. 89 : 18 I.C. 690 ... 566
Backhouse v. Charlton, (1878) 8 Ch. D. 44 ... 162
Bacon v. Searles, (1788) 1 H. Bl. 88 : 126 E.R. 53 ... 326
Bahadur Chand v. Ghulab Rai, 11 Lah. 34 : (1929) Lah. 577 : 116 I.C. 887 152, 431, 432, 434, 437, 438, 453
Bailey v. Bidwell, (1844) 13 M. & W. 73 : 13 L.J. Ex. 264 : 2 D. & L. 245 : 67 R.R. 517 : 153 E.R. 30 ... 467, 468
——v. Edwards, (1864) 34 L.J.Q.B. 45 : 4 B. & S. 761 : 122 E.R. 645. 190, 192
——v. Porter, (1845) 14 M. & W. 44 : 14 L.J. Ex. 244 ... 317
Baillie v. Moore, (1846) 15 L.J.Q.B 169 : 10 Jur. 592 ... 534
Baines v. National Provincial Bank, (1927) 96 L.J.K.B. 301 : 137 L.T. 631 : 32 Com. Cas. 216 ... 292, 293
Baisnab Chandra De v. Romdhon Dhor, 11 C.W.N 139 ... 234, 546
Baker v. Birch, (1811) 3 Camp. 107 : 13 R.R. 767 ... 287, 309, 312
——v. Dening, (1838) 8 Ad. & E. 94 : 3 N.L.P : 221 : 112 E. R. 77 : 2 Jur. 775 : 1 W.W.H. 148 : 7 L.J.Q.B. 137 : 47 R.R. 502 ... 31
Balaji v. Sakharam, 17 Bom. 555 ... 567
Balbhadar Prasad v. Maharaja of Betia, 9 All. 351 :(1887) A.W.N. 49. 34
Baldeo Prosad v. Girish Chander Bhose, 2 All. 754 ... 214
Baldwin v. Richardson, (1823) 1 B. & C. 245 : 2 D. & R. 285 : 25 R.R. 383 : 107 E.R. 91 ... 413
Balfour v. Ernest, (1859) 28 L.J.C.P. 170 : 7 W.R. 207 : 141 E.R. 242. 107
——v. Sea, Fire and Life Assurance Co., (1857) 27 L.J.C.P. 17 : 3 Jur. (N. S.) 1304 : 3 C.B.N.S. 300 : 6 W.R. 19 : 111 R.R. 663 : 140 E.R. 756 ... 62
Balgobind v. Baggumal, 35 All. 558 : 11 A.L.J. 854 : 21 I.C. 878 ... 291
Balkisandas v. Rambakdas, (1930) Nag. 187 : 122 I.C. 383 ... 461
Balkrishna Trimbak v. Govind Pand Naik, 8 Bom. 297 (F.B.) ... 27
Ballab Das v. Puran, 5 Luck 218 : 6 O.W.N. 1012 ... 604
Ballaya v. Subbayya, 40 Mad. 1171 : 44 I.C. 313 ... 32, 121
Ballingalls v Gloster, (1803) 3 East 481 : 4 Esp. 268 ... 277
Bally Singh v. Bhagwan Dass, 7 Bur. L. T. 95 : 23 I.C. 975 : 7 L.B.R. 101 ... 595, 596, 597
Bamfield v. Tupper, (1851) 7 Ex. 27 ... 271
Banarsi Prasad v. Fazal Ahmad, 28 All. 298 : (1906) A.W.N. 9 : 3 A.L.J. 25 ... 595
Banbury v. Lisset, (1744) 2 Stra. 1211 ... 366
Banco De Portugal v. Waddel, (1880) 5 A.C. 161 : 49 L.J.Bk. 33 : 42 L.T. 698 : 28 W.R. 477 ... 89, 91
Bancroft v. Hall, (1816) Holt's N.P.C. 476 ... 402
Bando v. Jambu, 12 Bom. L.R. 801 : 7 I.C. 986 ... 59
Bangaruswami v. Somasundaram, 27 M.L.J. 176 : 16 M.L.T. 102 : 1 L.W. 584 : 27 I.C. 161 ... 33

PAGE.

Bank of Australasia v. Breilat, (1847) 6 Moo. P.C. 152 : 12 Jur. 189 : 79 R.R. 24 : 13 E.R. 642 ... 129, 130
Bank of Bengal v. Fagan, (1849) 6 Moo. P.C. 61 : 13 Jur. 945 : 13 E.R. 802 : 5 M.I.A. 27 : 83 R.R. 15 (P.C.) 69, 124, 254, 263
——v. Kartick Chunder Roy, 16 Cal. 804 ... 174, 179
——v. McLeod, 5 M.I.A. 1 : 7 Moo. P.C. 35 : 13 Jur. 945 : (P.C.) 1 Sar. 391 : 13 E.R. 792 ... 81, 124
——v. Mendes, 5 Cal. 654 : 5 C.L.J. 586 ... 254
——v. Radhakissen, 3 M.I.A. 19 : 18 E.R. 405 (P.C.) ... 43
——v. Ramanathan Chetty, 43 Cal. 527 (P. C.) ... 124
Bank of Brazil, *Ex parte* ; *re* English Bank of the River Plate (1893) 2 Ch. 438 : 62 L J. Ch. 578 : 69 L. T. 14 : 41 W. R. 521 : 37 Sol. J. 373 : 9 T. L. R. 367 : 3 E. R 518 ... 420, 455
Bank of England v. Cutler, (1908) 2 K. B. 208 : 76 L. J. K. B. 504 : 96 L. T. 636 : 52 Sol. J. 442 ... 135
——v. Glover, (1702) 2 Ld. Raym. 753 ... 227
——v. Newman, (1699) I. Ld. Raym. 442 ... 227
——v. Vagliano, (1891) A. C. 107 : 60 L.J.Q.B. 145 : 55 J.P. 676 : 64 L.T. 353 : 39 W.R. 657 11, 156, 159, 198, 199, 223, 261, 353, 354, 357, 362
Bank of Ireland v. Archer, (1843) 11 M. & W. 383 : 12 L.J. Ex. 353 : 150 E.R. 852 ... 55
——v. Beresford, (1818) 6 Dow. C.H.L 233 : 19 R.R. 50 ... 205
——v. Evans' Trustees, (1855) 5 H.L.C. 389 : 3 W.R. 573 : 101 R.R. 718 : 10 E.R. 950 ... 254, 264
Bank of Montreal v. Dominion Gresham Guarantee and Casuality Co., (1930) A. C. 659 : 99 L.J. (P.C.) 202 ; 46 T.L.R. 575 ... 359, 492
——v. The King (1907) 38 Can. S.C.R. 258 ... 492
Bank of New South Wales v. Goulburn Valley Butter Co., Ltd., (1902) A.C. 543 : 71 L.J.P.C. 112 : 87 L.T. 88 : 51 W.R. 367 : 18 T.L.R. 735 (P.C.) ... 158
Bank of Rangoon v.Somasundaram Chetty, 8 Bur.L.T.I: 26 I.C.253. 125
Bank of Scotland v. Dominion Bank, (1891) A.C. 592 ... 73, 343
Bank of Van Diemens' Land v. Victoria Bank, (1871) L.R. 3 P.C. 526 : 40 L.J.C.P. 28 : 19 W.R. 857 : 17 E.R. 152 54, 217, 285, 289, 349, 350
Bankers claim, *In re* (1894) 3 Ch. 290 ... 566
Bankidas v. Tana Bai, (1929) Nag. 274 : 118 I.C. 673 ... 27, 78, 261
Banku Behari Shakha v. Krishto Gobindo Joardar, 30 Cal. 433 ... 255
——Sikdar v. Secy. of State for India, 36 Cal. 239 : 1 I.C. 929 ... 262, 263, 466
Banque Belge v. Hambrouck, (1921) 1 K. B. 321 ... 253
——Populaire De Bienne v. Cave, (1895) 1 Com. Cas. 67 ... 456
Bansidhar v. Bu Ali Khan, 3 All. 260 (F.B.) ... 34
——v. Jwala Prasad, 16 Bom. L.R. 434 : 25 I.C. 52 ... 21, 22
Banwari Lal v. Jagarnath Prasad, 1 Pat. L.J. 71 : 35 I.C. 431 ... 336
Barber v. Backhouse, (1791) 1 Peake 86 ... 209
——v. Gingell, (1800) 3 Esp. 60 ... 124, 127, 166
——v. Richards, (1851) 6 Ex. 63 : 20 L.J. Ex. 135 : 155 E.R. 455 : 15 Jur. 41 : 2 L.M. & P. 1 : 16 L.T. 344 : 86 R.R. 190 ... 72, 222
——& Co., *In re*, (1870) L.R. 9 Eq. 732 ... 279

PAGE.

Barber Maran v. Ramana Goundan, 20 Mad. 461 : 7 M.L J. 269 ... 327, 347
Barclay, *Ex parte*, (1802) 7 Ves. Jun. 596 : 32 E.R. 240 ... 394, 539
——v. Bailey, (1810) 2 Camp. 527 : 11 R.R. 787 ... 291
Baring v. Inland Revenue Commissioners, (1898) 1 Q.B. 78 ... 503
Barisal Rindan v. Sital, 34 C.W.N. 911 : (1930) Cal. 130 : 129 I.C. 407. 589
Barkat Ullah v. Muhammad, 84 I.C. 866 : 6 Lah. L.J. 542 ... 463, 464
Barker v. Sterne, (1854) 9 Exch. 684 : 2 C.L.R. 1070 : 23 L.J Ex. 201 : 2 W.R. 418 : 156 E.R. 293 ... 96
Barlow v. Bishop, (1801) 1 East 432 : 3 Esp. 266 : 102 E R. 167 ... 124
—— v. Broadhurst, (1820) 4 Moore P.C. 471 ... 34
Barnard, *Re*, Edwards v. Barnard, (1886) 32 Ch. 447 : (C.A.) : 55 L.J. Ch. 590 : 24 L.T. 647 : 19 W.R. 552 ... 55
Barnet v. Howard, (1900) 2 Q.B. 784 : 69 L.J.Q.B. 955 : 83 L.T. 301 : 16 T.L.R. 588 ... 115
Bartlett v. Benson, (1845) 14 M. & W. 733 : 15 L.J.Ex. 23 ... 397
Bartrum v. Caddy, (1838) 9 A. & E. 275 : 8 L.J Q.B. 31 ... 326
Barumal v. Dwaraka Doss, 25 I.C. 667 ... 370
Basant Ram v. Kola al, 1 All. 392 ... 152, 179
Basanta Kumar v. Nabinchandra, 53 Cal. 277 : 96 I.C. 594 : (1924) Cal. 789 ... 566
Basanti Bibi v. Sheo Mongal Prashad, 6 A.L.J. 233 : 2 I.C. 199 ... 336
Basiruddin Ahmed v. Kalika Prosad Sing, 7 I.C. 582 ... 597
Bateman v. Joseph, (1810) 12 East 433 : 2 Camp. 461 : 11 R.R. 443 : 104 E.R. 169 ... 278, 412
——v. Kingston, (1880) 6 Ir. L.R.C. 328 ... 235
——v. Midwales Railway Co., (1866) L.R. 1 C.P. 499, 12 Jur. (N.S.) 453 : 35 L.J.C.P. 205 : 1 H. & R. 508 : 14 W.R. 672 ... 118, 120
Bateson v. Gosling, (1871) L.R. 7 C.P. 9 ... 187
Bavins (Junior) and Sims v. London S.W. Bank, Ltd., (1900) 1 Q.B. 270 : 69 L.J.Q.B. 164 : 81 L.T. 655 : 48 W R 211 : 5 Com. Cas. 1 43, 492
Baxendale v. Bennet, (1878) L.R. 3 Q.B D. 525 (C.A.) : 47 L.J.Q.B. 624 : 26 W.R. 899 : 42 J.P. 677 : 40 L.T. 23 ... 69, 95, 254
Beak v. Beak, (1872) L R. 13 Eq. 489 : 41 L J. Ch. 47 : 26 L.T. 281. 162
Beardsley v. Baldwin, (1741) 2 Stra. 1151: 7 Md. 417: 93 E.R. 1094... 42
Beaumont, *In re*, Beaumont v. Ewbank, (1902) 1 Ch. 889, 71 L.J. Ch. 478 : 86 L.T. 410 : 50 W.R. 389 : 46 Sol. J. 317 ... 66, 159, 162
——v. Greathed, (1846) 2 C.B. 494 : 15 L.J.C P. 130 : 3 D & L. 631 : 135 E.R. 1039 ... 388
Beavan v. Mc Donnell, (1854) 9 Ex. 309 : 156 E.R. 131 ... 113
Bechervaise v. Lewis, (1872) L R. 7 C.P. 372 : 41 L.J.C.P. 161 ... 206
Bechuanaland Exploration Co. v. London Trading Bank, (1898) 2 Q.B. 658 : 67 L.J.Q.B. 986 : 3 Com. Cas. 285 : 79 L.T. 270 : 14 T.L.R. 587 ... 13
Beck v. Robley, (1774) 1 H.Bl. 89 (n) ... 274
Bedford v. Deakin, (1818) 2 B & Ald. 210, 2 Stark. 178 : 106 E.R. 344 ... 535, 539
Beecham v. Smith, (1858) 27 L.J.Q.B. 257 : E.B. & E. 31 : : 31 L.T.O.S. 176 : 4 Jur. N.S. 1018 : 6 W.R. 627 : 120 E.R. 574 ... 37
Beeching v. Gower, (1816) Holt's N.P.C. 313 : 17 R.R. 644 ... 299

PAGE.

Beeley v. Wingfield, (1809) 11 East 46 : 10 R.R. 431 : 103 E.R. 920. 260
Beeman v. Duck, (1843) 11: M. & W. 251 : 12 L. J. Ex. 198 : 53 R.R. 588: 152 E.R. 796 ... 197, 198
Begbie v. Levi, (1830) 1 Cr. & J. 180 : 1 Tyr. 130 : 9 L.J. (O.S.) Ex. 51 : 148 E.R. 1383 ... 465
Behari Lal v. Allahabad Bank, (1929) All. 664 : 27 A.L.J. 1137 : 122 I.C. 602 17, 28, 182, 184, 186, 187, 525
——Shaha v. Jagodischandra Shaha, 31 Cal. 798 ... 16
Beirnstien v. Usher & Co., (1895) 11 T.L.R. 356 ... 298
Belcher v. Campbell, (1845) 15 L.J.Q.B. 11 : 8 Q.B. 1: 115 E.R. 773: 9 Jur. 1073 ... 116
Bell v. Gardiner, (1842) 11 L.J.C.P. 195 : 4 M. & G. 11 : 4 Seott. N.R. 621 : 1 D. (N.S.) 683 : 61 R.R. 443 : 134 E.R. 5 ... 539
——v. Ingestre, (1848) 12 Q.B. 317 : 19 L.J.Q.B. 71 : 76 R. R. 295 : 116 E.R. 888 ... 221
Bellamy v. Marjoribanks, (1852) 7 Ex. 389 : 21 L.J. Ex. 70 : 16 Jur. 106 : 155 E.R. 999 ... 475, 480
Bellew v Bank of Upper India, Ltd., 13 O.C. 206 : 7 I.C. 727 ... 167
Bellman, *Re*, (1877) 4 Ch. D. 795 : 46 L.J.Bk. 60 ... 400, 402
Belshaw v. Bush, (1851) 11 C.B. 191 : 22 L.J.C.P. 24 : 138 E.R. 444: 17 Jur. 67 : 87 R.R. 639 74, 238, 536, 538
Bemola Dossee v. Mahundossee, 5 Cal. 792 : 6 C.L.R. 34 ... 131
Benain & Co. v. L. S. Debono, (1924) A.C. 514 ... 505
Benares Bank v. Hormusji, 52 All. 696 : (1930) All. 648 : (1930) A.L.J. 818 : 125 I.C. 449 ... 290, 291, 296
——v. Pirya Das, (1930) All. 106 : 122 I.C. 406 ... 159, 164, 294
Bence v. Shearman, (1898) 2 Ch. 582 : 67 L.J. Ch. 513 ... 325
Bennett v. White (1910) 2 K.B. 643 : 79 L.J.K.B. 1133 : 103 L.T. 52 272
Benode Behari v. Janaki Kalwar, 29 I.C. 468 ... 461
——v. Kishore v. Ashutosh, 16 C.W.N. 666 ; 14 I.C. 720 ... 229
Bensley v. Bignold, 5 B. & Ald. 335 : 106 E.R. 1214 ... 16
Bentink v. Dorrien, (1805) 6 East 199 : 102 E.R. 1263 : 2 Smith 337. 54, 217, 343, 424
Bernard, *In re*, Edwards v. Bernard, (1886) 32 Ch. D. 447 : 55 L. J. Ch. 935 ... 171
Berridge v. Fitzgerald, (1869) L.R. 4 Q.B. 639 : 38 L.J.Q.B. 335 : 10 B. & S. 668 ... 393, 402
Berry v. Alderman, (1853) 14 C.B. 95 : 2 C.L.R. 691: 23 L.J.C.P. 34 : 199 E.R. 40 ... 468
Besant v. Creet, 39 Cal. 249 ... 386
Besant v. Cross, (1851) 10 C. B. 805 : 20 L. J. C. P. 173 : 2 L. M. & P. 351 : 15 Jur. 828 : 138 E. R. 354 ... 524
Best v. Haji Muhammad Sait, 23 Mad. 18 ... 336
Bethell, *In re*, (1887) 34 Ch. D. 561 : 56 L. 7. Ch. 334 : 56 L. T. 92 : 3 T.L.R. 296 ... 316, 318, 572
Bevan v. National Bank, (1906) 23 T.L.R. 65 ... 448, 491
Bhagwandas v. Burjorji, 42 Bom. 373 (P. C.) ... 261
Bhagwat Dayal Singh v. Debi Dayal Sahu, 35 Cal. 420, 429 : 10 Bom. L. R. 230 : 18 M. L. J. 100 : 3 M. L. T. 344 : 14 Bur. L. R. 49 : 12 C.W.N. 393 : 7 C.L.J. 335 : 5 A.L.J. 184: 35 I.A. 48 (P.C.) 135

PAGE.

Bharat National Bank v. Banarsi Das, 5 Lah, 129 : (1924) Lah. 531. 333
Bharata Pisharodi v. Vasudevan Nambudri, 27 Mad. 1 (F. B.) : 14 M. L. J. 65 ... 28,593
Bhavoomal v, Mazor, 52 I. C. 870 ... 187
Bhawal Sahu v. Baijnath Pertab Narayan Singh, 35 Cal. 320 . 12 C.W.N. 256 : 3 M. L. T. 156 ... 141
Bhawanji v. Devji Punja, 19 Bom. 635 216, 577, 584, 585, 599
Bhawanji Narsi v. Pitamberdas, (1925) Sindh 241 : 19 S. L. R. 12 : 86 I. C. 357 ... 318, 574, 600
Bhikki Mal v. Lala Raghubi, 23 A. L. J. 861 : 88 I. C. 915 : (1925) All. 811 : ... 306
Bhogi Ram v. Kishori, 50 All. 754 : 26 A. L. J. 696 : (1928) All. 289 : 115 I.C. 771 220, 222, 223, 523, 529
Bhupati Ram v. Sourendra Mohun, 30 Cal. 446 : 7 C. W. N. 412 ... 336, 554
Bhuputram v. Hari Prio Coach, 5 C. W. N. 313 22, 65, 238, 331
Bibi Khazmi v. Lachman Lal, 9 Pat. 717 : (1930) Pat. 239 : 127 I.C. 575 46, 79, 89, 90, 580
Bickerdike v. Bolman, (1786) 99 E. R. 1164 : 1 T. R. 405 : 51 R. R. 242 : 2 Smith's L. C. (11th Edn.) 102 ... 316, 412
Bidder v. Bridges, (1887) 37 Ch. D. 406 : 57 L. J. Ch. 300 : 58 L.T. 656 ... 540
Biddulph v. Bingham, (1874) 30 L.T. 30 ... 21
Bidya Soundree Dossee v. Baboos Ashootosh Dhur 15 W. R. 267. 146
Bignold, *Exparte*, *Re* Breveton, (1836) 1 Deac. 712 : 2 Mont. & A. 633 309
Bilbie v. Lumiey, (1802) 2 East 469 : 6 R. R. 479 : 102 E. R. 448 ... 316
Billing v. Devaux, (1841) 3 M. & Gr. 565 : 5 Jur. 1182 : 4 Scott. (N. R.) 175 : 11 L. J. C. P. 38 : 133 E.R. 1267 ... 54, 56
Bird v. Brown, (1850) 4 Ex. 786 : 19 L. J. Ex. 154 : 14 Jur. 132 : 154 E. R. 1433 ... 135
——*Ex parte*, (1851) 4 De. G. & S. 273 : 20 L. J. Bk. 16 : 15 Jur. 894 : 64 E. R. 829 ... 225, 226
Birjmohun Lal v. Rudra Prakash Misser, 17 Cal. 944 ... 116
Birmingham Banking Co., *Ex parte*, (1868) 3 Ch. App. 651, 37 L. J. Ex. 905 : 19 L. T. 193 : 16 W. R. 1003 ... 31, 121
Bishen Chand v. Babu Audh Behari, 2 Pat. L. J. 451 : 40 I.C. 350 : 1 Pat. L. W. 615 : (1917) P. H. C. C. 279 ... 39, 93, 336
—— v. Rajendro Singh, 5 All. 302 ; (1883) A. W. N. 50 ... 474
——Chunder v. Maung Po Thwe, U. B. R. (1897—1901) 523 ... 62
——Das v. Gur Das, (1930) Lah. 148 : 122 I. C. 477 : 31 P.L.R. 138. 334
——Sahavi v. Abdul Sattar, (1930) Lah. 559 ... 555
Bishop v. Chitty, (1742) 2 Stra. 1195 : 93 E. R. 1123 ... 297, 392
——v. Curtis (1852) 21 L. J. Q. B. 391 : 18 Q. B. 878 : 17 Jur. 23 : 118 E. R. 332 ... 252, 543
——v. Hayward, (1791) 4 T. R. 470 : 100 E. R. 1124 ... 179, 247
——*Ex parte*, *Re*. Fox, Walker & Co., (1880) 15 Ch. D. 400 : 50 L.J. Ch. 18 ... 205
Bishunath v. Ishri Dayal, 112 I.C. 247 ; . (1928) Oudh 408 ... 596
Bissell v. Fox & Co. (1884) 51 L. J. N. S. 663 ... 488, 493
Biswanath v. Chandra, 48 Cal, 509 ; 48 I. A. 127 ; 63 I. C. 770 ... 198
——v. Gobinda, 29 C. L. J. 30 : 23 C.W.N. 534 : 51 I. C. 88 ... 575

PAGE.

Black v. Peele, 1775 cited 1 Dougl. 249 : 99 E. R. 162 ... 346
Blake v. Lawrence, (1802) 4 Esp. 147 ... 296
Blanckenhagen v. Blundell, (1819) 2 B. & Ald. 417 : 106 E. R. 418. 37, 47
Block v. Bell, (1831) 1 Moo. & R 149 ... 33, 89
Blumberg v. Life Interests Corporation. (1897) 1 Ch. 171 : 45 W.R. 246 : 66 L. J. Ch. 127 : 75 L. T. 627 : affirmed in (1898) 1 Ch. 27. 73
Board of Trade v. The Employer's Liability Assurance Corporation, Ltd., (1910) 2 K B, 649.: 79 L. J. Q. B. 1001 : 102 L. T.850 : 54 Sol. J. 581 : 26 T. L. R. 511 (C.A,) ... 272
Boardman v. Quayle, (1856) 11 Moo. P.C. 223 : 5 W. R. 799 : 14 E. R. 680 ... 35
Bobbett v. Pinkett, (1876) 1 Ex. D. 368, 45 L. J. Ex. 555 : 34 L. T. 851 : 24 W. R. 711 ... 332, 480, 481
Boddington v. Schlencher, (1833) 4 B. & Ad. 752 : 1 N. & M. 541 : 2 L. J. K. B. 138 : 110 E R. 639 ... 433
Boehm v. Garcias, (1807) 1 Camp. 425 (n) : see 7 East 387 ... 366
Bojjamma v. Venkataramayya, 21 Mad. 30 ... 51
Bolton v Carlisle, (1793) 2 H. Bl. 263 ... 379
——v. Dugdale, (1833) 4 B. & Ad. 619 : 2 L. J. K. B. 104 : 1 N. & M. 412 : 38 R. R. 326 : 110 E R. 589 ... 34, 46
——v. Richards, (1795) 6 T. R. 139 : 1 Esp. 106 : 101 E R 477 ... 35
Bolyechand Singh v. Moulard, 4 Cal. 572 ... 73, 535
Bombay City Bank Co. v. Moonjee Haridoss, Bourke (P.C.) Rep. 274 419
——Co. Ltd. v. National Jute Mills Co., 39 Cal. 669 : 16 I.C. 153 ... 597
——Steam Navigation Co. v. Ramdoss, 14 Bom. L. R: 16 I.C. 61 ... 12
Bondhu Mal v. Mahomed Shah, 156 ... 553
Booth v. Bank of England, 7 Cl. & F. 509 : 7 E.R. 1163 ... 16
Borough v. Perkins, (1703) 1 Salk. 131 : 91 E.R. 123 ... 429
Borradaile v. Lowe, (1811) 4 Taunt. 93 : 128 E.R. 263 ... 314
Boswell v. Smith, (1833) 6 C. & P. 60 ... 50
Bottomley v. Nuttall, (1858) 28 L.J.C.P. 110 : 5 C.B.N.S. 122 : 5 Jur. (N.S.) 315 : 116 R.R. 592 : 141 E.R. 48 ... 533
Bourke v. Mealy, (1879) 14 Cox. C.C. 329 ... 62
Bowerbank v. Monteiro, (1813) 4 Taunt. 844: 128 E.R. 564 : 14 R.R. 679 ... 366
Bowes v. Howe, (1813) 5 Taunt. 30 : 14 R.R. 700 : 128 E.R. 596 ... 287
Boyd v. Emmerson, (1834) 2 A. & E. 184 : 4 L.J.K.B. 43 : 4 N. & M. 99 : 111 E.R. 71 ... 156
Boyle v. Webster, (1852) 17 Q.B. 950 : 21 L.J. Q.B. 202 : 16 Jur. 683: 117 E.R. 1545 ... 111
Boys, *Re*, Eedes v. Boys *Ex parte* Hop. Planters Co. (1870) L.R. 10 Eq. 467 : 39 L.J. Ch 655 ... 222
Boyse, *Re*, Crofton v, Crofton, Canong's claim, (1886) 33 Ch. D. 621 : 56 L.J. Ch. 135 : 55 L.T. 391 : 35 W. R. 247 ... 44, 287
Bradlaugh v. De Rin, (1868) L.R. 3 C.P. 538 : (1870) L.R. 5 C.P. 473 : 39 L.J. C.P. 254 : 22 L.J 623 : 18 W.R. 931 (Ex. Ch.) ... 506
Bradley v. Agra Bank, 101 P.R. 1885 (Civ.) ... 25, 154, 155
Brahmayya v. Rami Reddi, 16 M.L.T. 185 ... 33
Braithwaithe v. Gardiner, (1846) 8 Q.B. 473 : 15 L.J.Q.B. 187 : 10 Jur. 591 : 115 E.R. 954 ... 116

PAGE.

Brajendra v. The Hindustan Co-operative Insurance Society, 44 Cal. 978 : 21 C.W.N. 482 : 25 C.L.J. 233 : 39 I.C. 705 ... 86, 93, 189, 564
Bramah v. Roberts, (1837) 3 Bing. N.C. 963 : 132 E.R. 682 ... 118, 130
Bramah Deo v. Ramkishen, (1921) Pat. 318 ... 595
Brardao v. Barnett, (1846) 12 Cl. & F. 787, 805 : 3 C. B. 519 : 69 R.R. 204 : 8 E.R. 1622 ... 12, 102, 157
Bransby v. East London Bank, (1856) 16 L. T. (N. S.) 463 : 14 W. R. 652 ... 156
Bray v. Hadwen, (1816) 5 M. & S. 68 : 17 R. R. 277 : 105 E. R. 976. 408, 436
Bremer v. Freeman, (1857) 10 Moo. P. C. 358 : 14 E.R. 508 ... 512
Brett v. Levett, (1811) 13 East 213, 214 : I Rose 102 : 104 E.R. 351. 411
Brian v. Quackerstein, (1848) 12 L. T. (O.S.) 153 ... 96
Bridges v. Berry. (1810) 3 Taunt. 130 : 12 R. R. 618 : 128 E. R. 51. 397, 538
Brij Bhushan v. Ranyanam Kuar 13 Pat. L.T. 506 ... 572
Brijmohan Lal v. Rudra Perkash Misser, 17 Cal. 944 ... 116
Brind v. Hampshire, (1836) 1 M. & W. 365, 373 : 5 L.J. Ex. 197 2 Gale 33 : 1 Tyr. & G. 790 : 150 E.R. 475 ... 84, 218
Bristow v. Sequeville, (1850) 5 Ex. 275 : 19 L.J. Ex. 289 : 14 Jur. 674 : 82 R.R. 664 : 155 E.R. 118 ... 504, 512
British American Bank v. British Bank for Foreign Trade, (1926) 1 K.B. 328 : (1926) W. N. 17 ; 95 L.J.K.B 326 ; 34 L.T. 472 ; 42 T.L.R. 202 ... 331
British American Continental Bank, Ltd., *In re*, (1922) 2 Ch. 575, 589 ... 457
British American Elevator Co., v. Bank of British North America, (1919) A.C. 658 ... 158
British Linen Co. v. Drummond, (1830) 10 B. & C. 903 : 9 L.J. (O.S.) K.B. 213 : 34 R.R. 595 : 109 E.R. 683 ... 507
British North European Bank v. Zalztein, (1927) 2 K.B. 92 : (1927) W. N. 95 : 137 L.T. 127 : 96 L.J.K.B. 539 : 43 L.T.R. 299 ... 161
British South African Co v. De Beers Consolidated Mines, (1910) 1 Ch. 354 : 102 L.T. 95 : 54 L.J. 289 : 79 L.J. Ch. 345 : 7 Manson 190 : 26 T.L.R. 285 ... 117
British Trade Corporation, Ltd., *In re*, (1932) 2 Ch. 1 ... 89, 298, 528
Britten v. Webb, (1824) 2 B. & C. 483 : 3 D. & R. 650 : 107 E.R. 463 : 2 L.J. (O.S.) K.B. 118 ... 179, 247
Brocklesby v. Temperance Permanent Building Society, (1895) A.C. 173 : 64 L.J. Ch. 433 : 72 L.T. 477 : 40 W.R. 606 : 59 J.P. 676 (H.L.) (E.) ... 124
Brojendra Nath Bakshi v. Emperor, 45 I.C. 275 : 19 Cr. L.J. 515 ... 602
Brojendra Nath Mullick v. Sreemutty Leckey Money Dassee, 29 Cal. 595 : 6 C.W.N. 816 ... 260, 463
Brojo Lal v. Budh Nath, 55 Cal. 551 : (1928) Cal. 148 : 105 I.C. 149. 11, 59, 542
Bromage v. Lloyd, (1847) 1 Exch. 32 : 16 L.J. Ex. 257 : 5 D. & L. 123 : 154 E.R. 14. 147, 217, 218, 252
——v. Vaughan, (1846) 9 Q.B. 608 : 16 L.J.Q.B. 10 : 10 Jur. 982 : 115 E.R. 1406 ... 404, 405
Bromley v. Brunton, (1878) L.R. 6 Eq. 275 : 37 L.J. Ch. 902 : 18 L.T. 628 : 16 W.R. 1006 ... 162

PAGE.

Brook v. Brook, (1861) 9 H.L.C. 193 : 7 Jur. (N.S.) 422 : 4 L.T. 93 : 9 W.R. 461. Affirming 3 Sm. & G. 481 : 11 E.R. 703 : 27 L.J. Ch. 401 ... 502
——v. Hook, (1871) L.R. 6 Exch. 89 : 40 L.J. Ex. 50 : 24 L. T. 34 : 19 W.R. 508 ... 264
Brooks v. Elkins, (1836) 2 M. & W. 74 : 6 L.J. Ex. 6 : 2 Gale. 200 : 46 R.R. 505 : 150 E.R. 675 ... 27, 28
——v. Mitchell, (1841) 9 M. & W. 15, 18 : 11 L.J. Ex. 51 : 152 E.R. 7. 304
Broughton v. Manchester Water Works Co. (1819) 3 B. & Ald. 1 : 60 L.J. 397 : 37 W.R. 463 : 22 R.R. 278 : 106 E.R. 564 ... 117, 118
Brown v. Byers, (1847) 16 L.J. Ex. 112 : 16 M. & W. 252 : 153 E.R. 1182 ... 123, 129
——v. Dimbleby, (1904) 1 K.B. 28 : 73 L.J.K.B. 35 : 89 L.T. 424 115
——v. Gracey, (1821) D. & R. N.P.C. 41 (n) ... 511
Browne v. De Winton (1848) 6 Dow. & L. 82 : 17 L.J.C.P. 281 : 6 C.B. 336 : 12 Jur. 678 : 77 R.R. 338 : 136 E.R. 1281 ... 37
Brutt v. Picard, (1824) Ry. & M. 37 : 27 R.R. 727 ... 379
Bryant Powis & Bryant v. La Banque Du Peuple, (1893) A.C. 170 : 72 L.J.P.C. 68 : 68 L.T. 546 : 41 W.R. 600 : 9 T.L.R. 322 ... 122, 123, 124
Bubby Hurry & Co. v. Hertzy & Co., 4 Lah. 915 : (1923) Lah. 541 : 73 I.C. 421 ... 165
Buck v. Robson, (1878) 3 Q.B.D. 686 : 48 L.J.Q.B. 250 : 39 L.T. 325. 43
Buckley v. Jackson, (1868) L.R. 3 Ex. 135 : 18 L.T. 886 ... 239
Budavaram v. Noota Ibbudram, 44 M.L.J. 240 ... 36
Budhu Mal v. Firm of Gokal Chand, 7 Lah. 113 ... 596
Bulaqi v. Abdul Rahim, (1923) Lah. 638 : 75 I.C. 958 ... 270, 326
Bulkeley v. Butler, (1824) 2 B. & C. 439 : 3. D. & R. 625 : 107 E.R. 446 ... 330
Bullab Das v. Puram, 5 Luck. 218 ... 604
Bult v. Morrel, (1840) 12 A. & E. 745 : 10 L.J.Q.B. 52 : 54 R.R. 681 : 113 E.R. 996 ... 55, 118. 130
Bunarsee Doss v. Gholam Hossien, 13 M.I.A. 358 : 13 W.R. (P.C.) 29. 20 E.R.585 ... 129
Bunsidhar v. Bu Ali Khan, 3 All. 260 (F.B.) ... 30, 34
Burbridge v. Manners, (1812) 3 Camp. 193 : 13 R.R. 786. 73, 274. 325, 438
Burchfield v. Moore, (1854) 23 L.J.Q.B. 261 : 3 E. & B. 683 : 2 C.L.R. 1308 : 18 Jur. 727 : 2 W.R. 454 : 118 E.R. 1297 ... 374, 375
Burdon v. Banton, (1847) 9 Q.B. 843 : 16 L.J.Q.B. 353 : 11 Jur. 713: 72 R.R. 469 : 115 E.R. 1498 ... 72, 206
Burgess v. Merrill, (1812) 4 Taunt. 468 : 128 E.R. 410 ... 111
Burgh v. Legge, (1839) 5 M. & W. 418 : 8 L.J. Ex. 258 : 7 D.P.C. 814 : 52 R.R. 788 : 151 E.R. 177 ... 312, 401, 411
Burmester v. Barron. (1852) 17 Q.B. 828 : 21 L.J.Q.B. 135 : 16 Jur. 314 : 85 R.R. 688 : 111 E.R. 1498 ... 403
Burn v. Carvalho, (1839) 1 Ad. & E. 883 : 110 E.R. 1445 : 4 Myl & Cr. 690, 702 ... 43, 44
——v. Morris, (1834) 2 Cr. & M. 579 : 4 Tyr. 485 : 3 L. J. Ex. 193 : 149 E.R. 891 ... 210
——& Co. *In the matter of*, 37 Cal. 634 : 14 C.W.N. 833 : 61 I.C. 778 27, 579

PAGE.

Burrows v. Jemino, (1726) 2 Stra. 733 : 93 E.R. 815 ... 507
Buxton v. Jones, (1840) M. & G. 83 : 9 L.J.C.P. 257 : 1 Scott N. R. 19 : 56 R.R. 305 : 133 E.R. 256 ... 297, 299
Byjnath Sahoo v. Racharam, 5 W.R. 86 : 1 Ind. Jur. (N.S.) 76 ... 19, 180
Byron v. Thompson, (1839) 11 A. & E. 31 : 9 L.J.Q.B. 26 : 3 P. & D. 71 : 3 Jur. 1121 : 52 R.R. 269 : 113 E. R. 324 ... 379, 586

C

Callow v. Lawrence, (1814) 3 M. & S. 95 : 15 R.R. 423 : 105 E.R. 546. 189, 231, 274
Calvert v. Gorden, (1828) 7 B. & C. 809 : 3 M. & Ry. 124 : 7 L.J.K.B. (O.S.) 77 ... 189
Camidge v. Allenby, (1827) 6 B. & C. 373, 375 : 9 D. & R. 391 : 15 L.J. (O.S.) K.B. 95 : 33 R.R. 358 : 108 E.R. 489 227, 290, 401, 534, 535, 538
Campbell v. Anderson, (1829) 4 Bligh 513 (N.S.) : 5 E.R. 183 ... 136
——v. French, (1795) 6 T.R. 200 : 1 Aust. 58 : 2 H.Bl. 163 : 3 R.R. 154 : 101 E.R. 510 101, 103, 136, 283
Capital and Counties' Bank v. Gordon, (1903) A.C. 240 : 72 L.J. K.B. 451 : 88 L. T. 574 : 51 W.R. 671 : 8 Com. Cas. 221 : 19 T.L.R. 462 43, 46, 49, 50, 89, 90, 484, 486, 493, 580
Cariss v. Tattersall, (1841) 2 M. & Gr. 890 : 3 Scott. (N.R.) 621 : 11 L.J.C.P. 195 : 133 E.R. 1004 ... 380
Carlisle & Cumberland Banking Co. v. Bragg, (1911) 1 K.B. 489 : 80 L.J.K.B. 472 : 104 L.T. 121 ... 256, 356
Carlon v. Kenealy, (1843) 16 M. & W. 139 : 1 D. & L. 331 : 13 L.J. Ex. 64 : 152 E.R. 1144 ... 295
Carlos v. Fancourt, (1794) 5 T.R. 482 : 2 R.R. 647 : 101 E.R. 272 ... 42, 43
Carringtons Ltd. v. Smith, (1906) 1 K. B. 79 : 75 L. J. K. B. 49 : 93 L.T. 779 ... 65
Carter v. Agra Savings Bank, 5 All. 562 ... 35
——v. Flower, (1847) 16 M. & W. 743 : 16 L.J. Ex. 199 : 4 D. & L. 529 : 11 Jur. 313 : 73 R.R. 706 : 153 E.R. 1390 ... 416
——v. White, (1882) 20 Ch. D. 225, also 25 Ch. D. 666 : 54 L.J. Ch. 138 : 50 L.T. 672 : 32 W.R. 692 (C.A.) 97, 98, 189, 322, 393
Cartwright v. Williams, (1818) 2 Stark. 340 ... 239
Carvick v. Vickery, (1783) 2 Dougl. 653 (n) : 99 E.R. 414 ... 241
Casey v. Rose, (1900) 82 L.T. 616 ... 437
Cash v. Taylor, (1830) 8 L.J. (O.S.) K.B. 262 ... 125
Castrique v. Bernabo, (1844) 6 Q.B. 498 : 14 L.J.Q.B. 3 ; 66 R.R. 475. 396
——v. Buttigieg, (1865) 10 Moo. P.C. 94 : 4 W.R. 445 : 14 E.R. 427 85, 138, 202, 246, 526, 527
——v. Imrie, (1870) L.R. 4 H.L. 435 : 39 L.J.C.P. 350 : 23 L.T. 48 : 19 W.R. 1 (H.L.E.) ... 343
Caton v. Caton, (1867) L.R. 2 H.L. 127 : 36 L.J. Ch. 886 : 16 W.R. 1 ... 32
Caunt v. Thompson, (1849) 18 L.J.C.P. 125 : 7 C.B. 400 : 6 D. & L. 261 : 13 Jur. 495 : 78 R.R. 700 : 137 E.R. 159 ... 305, 401
"Celia S.S" v. Volturno, (1921) 2 A.C. 544 ... 457
Central Bank of India v. Nadir Shaw, (1924) Sindh. 13 : 79 I.C. 445. 33

PAGE.

Chellamayya v. Varadayya, 22 Mad. 166 ... 546
Chamberlain v. Young, (1893) 2 Q.B. 206 : 63 L.J.Q.B. 28 : 69 L.T. 332 : 42 W.R. 72 : 9 T.L.R. 527 : 39 Sol. Jo. 580 ... 48, 90, 97
Chambers v. Miller, (1832) 32 L.J.C.P. 30 : 13 C.B.N.S. 125 : 7 L.T. 856 : 11 W.R. 236 : 143 E.R. 50 : 134 R.R. 479 ...161, 330, 332
Chami v. Ana Pattar, 33 I.C. 661 ... 596
Champak Lal v. Keshori Chand, 50 Bom. 765 : 28 Bom. L.R. 897 : (1926) Bom. 471 ... 18, 21
Chandan Singh v. Bidhya Dhar, 15 I.C. 856 ... 548, 566
Chanda Singh Amritsar Banking Co., 2 Lah. 330 ... 596
Chandana Venkatadri v. M. Lakshminarasimha, 21 M.L.J. 80 : 8 M.L.T. 449 8 : I C. 33 : (1910) M.W.N. 824 ... 81, 230, 542
Chandan Mull v. National Bank, 51 Cal. 43 ... 19, 575, 605
Chandi Ram v. Tejbhan, 72 I.C. 777 ... 287
Chandra Kali Dabee v. Chapman, 32 Cal. 799 : 9 C.W.N. 443 ... 262, 263
Chandra Kant v. N.P. Pogose, 3 B.L.R. 83 ... 570
Chandra Kant Mookerjee v. Kartickcharan Chaile, 5 B.L.R. 193 : 14 W.R. (O.C.) 38 ... 510, 575
——Prasad v. Varjalal, 8 Bom. L.R. 644 ... 36
Chandu v. Rammuni, 39 M.L.J. 273 : (1920) M.W.N. 600 : 13 L.W. 183 : 28 M.L.T. 262 : 59 I.C. 943 ... 37, 83
Chanthiruthi v. Veetil Rama, (1910) M.W.N. 211 : 8 M.L.T. 85 ... 59, 542
Chapman v. Black, (1819) 2 B. & Ald. 588 : 21 R.R. 407 : 106 E.R. 481 ... 539
——v. Cottrell, (1865) 34 L.J. Ex. 186 : 3 H. & C. 865 : 11 Jur. (N.S.) 530 : 12 L.T. 706 : 13 W.R. 843 : 159 E.R. 774 ... 216, 217, 503
——v. Keane, (1835) 3 A. & E. 193 : 4 L.J.K.B. 185 4 N. & M. 607 42 R.R. 363 111 E.R. 386 ... 393, 344, 435
——v Smethurst, (1909) 1 K.B.927 (C A) : 78L.J.K.B. 654 : 25 T.L.R. 383 : 100 L.T. 465 : 14 Com. Cas. 4 : 16 Manson 171: 59 Sol. Jo. 340 ... 139
Chard v. Fox, (1849) 14 Q.B. 200 : 13 Jur. 960 ... 406
Charles v. Blackwell, (1877) 2 C.P.D. 151 : 46 L.J.C.P. 368 : 36 L.T. 195 : 25 W.R. 472 212, 355, 357, 360
Charry v. Poohmal, 50 Bom. 665 ... 556
Chartered Bank of India, Australia and China v. Macfayden & Co., (1895) 64 L.J.Q.B. 637 : 72 L.T. 428 ... 172
Chartered Mercantile Bank v. Dickson, (1871) L.R. 3 P.C. 574 : 8 Moo. P.C.C. 51, 17 E.R. 213 (P.C.) ... 304
——v. Seconde, 3 B.L.R. (O.C.J.) 146 ... 554
Chaters v. Bell, (1801) 4 Esp. 48 ... 429
Chatur Jagsi v. Tulsi, 2 Bom. 230 : (1877) P.J. 237 ... 62
Cheek v. Roper, (1804) 5 Esp. 175 ... 278
Chegganmal Sowcar v. Manicka Mudaliar, 50 M. L. J. 242 : 94 I.C. 384 :(1926) Mad. 792 ... 92, 299
Chellappa v. Subramaniam, 8 L.W. 221 : (1918) M.W.N. 564 : 47 I.C. 948 ... 51
Chenbasappa v. Lakshman, 18 Bom. 369 ... 597
Chengalroya v. Nainiappa, 117 I.C. 133 : 56 M.L.J. (N.R.C.) 8 ... 109, 472

PAGE.

Chenibash v. Kadum, 5 Cal. 97 ... 567
Chesmer v. Noyes, (1815) 4 Camp. 129 ... 419
Chetandas v. Ralli Bros., 83 I.C. 135 ... 183
Chetti v. Chetti, (1909) P. 67 ... 502
Chhakmal Chopra v. Emperor, 44 Cal. 321 : 21 C.W.N. 248 : 24 C.L.J. 441 ... 603
Chichester v. Hill & Son, (1882) 52 L.J.Q.B. 160 : 48 L.T. 364 : 31 W.R. 245 : 15 Cox. C.C. 258 ... 254
Chidambaram v. Ramasami, 27 M.L.J. 631 : 26 I.C. 911 ... 32
——v. Veerappa, 22 M.L.T. 380 ... 141
——Chetty v. Aiyasami Thevan, 40 Mad. 585 : 31 M.L.J. 401 : 4 L.W. 261 : (1916) 2 M.W.N. 210 : 36 I.C. 741 : 20 M.L.T. 350. 15, 16, 17, 472, 572
Childs v. Monins, (1821) 2 Broad. & B. 460 : 5 Moore. C.P. 282 : 23 R.R. 513 : 129 E.R. 1044 ... 146
Chinnaiyan v. Mohamed Fakaruddin Sahi, 2 M.H.C.R. 322 ... 10
Chinnamma v. Ayyanna, 16 Mad. 283 ... 28
Chinnappa v. Muthuraman, 9 M.L.T. 281 : 10 I.C. 669 ... 596
Chockalinga Pillai v. Natesa Ayyar, 17 Mad. 147 ... 543, 544
Chockalingam Chetty v. Annamalai Chetty, 34 I.C. 417 ... 577
Chocken v. Coomarappa Chetty, L.B.R. (1893—1900) 537 ... 464
Cholmely v. Darley, (1845) 14 M. & W. 344 : 14 L.J. Ex. 328 : 69 R.R. 709 : 153 E.R. 507 ... 31
Choonilal Seal v. Spence's Hotel & Co. Ltd., 1 B.L.R. (O.C.J.) 14 118, 120
Chotey Lal v. Girraj, 93 I.C. 63 : (1926) All. 359. 470, 592, 595, 599
Choto Lal v. Gumani, (1926) Pat. 432 ... 595, 596
Christacharlu v. Karibasayya, 9 Mad. 399 (F.B.) ... 375
Chunilal Tulsiram v. Mulabai, 12 Bom. L.R. 466 : 6 I.C. 903 ... 597
Church v. Pontifex, (1850) 9 C.B. 229 ... 102
Clare & Co. v. Dresduer Bank, (1915) 2 K.B. 576 ... 156
Clarke v. Birley, (1889) 41 Ch. D. 422 : 58 L.J. Ch. 616 : 60 L.T. 948 : 37 W.R. 146 ... 189
——v. London & County Banking Co., (1897) 1 Q.B. 552 : 66 L.J.Q.B. 354 : 76 L.T. 293 : 45 W.R. 383 ... 493, 495
——v. Percival, (1831) 2 B. & Ad. 651 : 9 L.J. (O.S.) K.B. 296 : 109 E.R. 1289 ... 35
——v. Sharpe, (1838) 3 M. & W. 166 : 1 H. & H. 35 : 49 R.R. 556 : 150 E.R. 1101 ... 403
Clayton v. Gosling, (1826) 5 B. & C. 360 : 14 L.J. (O.S.) K.B. 176 : 8 D. & R. 110 : 108 E.R. 134 ... 44, 563
Clegg v. Levy, (1822) 3 Camp. 166 ... 504
Clement v. Cheeseman, (1884) 27 Ch. D. 631 : 54 L.J. Ch. 158 : 33 W.R. 40 ... 162
Clerk v. Pigot, (1699) 12 Mod. 139 : 88 E.R. 1256 ... 231
Clod v. Bayley, (1843) 12 M. & W. 51 : 13 L.J Ex. 17 : 7 Jur. 1092 : 67 R.R. 253 : 152 E.R. 1107 ... 157, 409
Clutton & Co. v. Attenborough (1895) 2 Q.B. 707 (C.A.)(1897) D.C. 90. 198, 199
Cobbon v. Downe, (1803) 5 Esp. 41 : 8 R.R. 825 ... 12
Cocks v. Masterman, (1829) 9 B. & C. 902 : 8 L.J. (O.S.) K.B. 77 : 4 Man. & R. 676 : 109 E.R. 335 : 33 R.R. 365 ... 452

PAGE.

Cockshott v. Bennet, (1788) 2 T.R. 763 : 1 R.R. 617 : 100 E.R. 411. 528
Cohen v. Bank of Bengal, 2 All. 598 ... 524
——v. Hale (1878) 3 Q.B.D. 371 : 47 L.J.Q.B. 409 : 63 L.T. 206 : 38 W. R. 551 ... 161, 536
——v. Mitchell, (1890) 25 Q.B.D. 262 : 59 L.J.Q.B. 409 : 63 L.T. 206 : 38 W.R. 551 ... 116
Cohn v. Boulken, (1920) 36 T.L.R. 7 767 : 64 Sol. Jo. 536 ... 35
Colborne, *Ex parte*, (1870) L.R. 11 Eq. 478 : 40 L.J. Ch. 93 : 23 L.T. 515 : 19 W.R. 223 ... 80
Colehan v. Cooke, (1742) 2 Stra. 1202 : Willis 393 : 125 E.R. 1231. 44
Coleman v. Bucks & Oxon Union Bank, (1897) 2 Ch. 243 : 66 L. J. Ch. 564 : 76 L.T. 684 : 45 W.R. 616 ... 158
Collector of Ahmednagar v. Rambhan Tukaram, (1930) Bom. 392 (F.B.) 592
Collen v. Wright, (1857) 7 E. & B. 301 : 26 L.J.Q.B. 647 : 110 R.R. 602 : 119 E.R. 1259 affirmed 8 E. & B. 647 : 27 L.J.Q.B. 215 : 4 Jur. (N.S.) 357 : 6 W.R. 123 : 110 R.R. 611 ... 135, 144
Collins v. Godefray, 1 B. & Ad. 950 : 9 L.J.K.B. 158 ... 63
Collinson v. Lister, (1855) 7 De. G.M. & G. 634, 637 : 44 E.R. 247... 157
Collis v. Emmet, (1790) 1 H. Bl. 313 : 126 E.R. 185 ... 97, 151, 474
Colonial Bank v. Cady, (1890) 15 A.C. 267 : 60 L.J. Ch. 131 : 63 L.T. 27 : 39 W.R. 17 : 6 T.L.R. 329 ... 12
——Bank of Australasia v. Marshall, (1906) A.C. 559 : 75 L.J.P.C. 76 : 95 L.T. 310 ... 361, 362, 386
Colson v. Arnot, (1874) 54 New York Rep. 253, 260 ... 69
Commercial Bank of South Australia, *In re*, (1887) 36 Ch. D. 522 : 57 L.J. Ch. 131 : 57 L.T. 395 : 36 W.R. 550 : (1887) W.N. 44 ... 90, 456
Commercial Bank of Tasmania v. Jones, (1893) A.C. 313 : 62 L.J. P.C. 104 : 68 L.T. 776 : 42 W.R. 256 : 57 J.P. 644 ... 188
Commissioners of Taxation v. English, Scottish and Australian Bank, (1920) A.C. 683 51, 486, 491, 495
Committee of London Clearing Bankers v. Commissioners of Inland Revenue, (1896) 1 Q.B. 542 : 65 L.J.Q.B. 372 : 74 L.T. 209 : 44 W.R. 516 ... 553, 574
Communder Mohideen Saib v. Oree Meerah Sahib, 7 M.H.C.R. 271. 270
Concha v. Murietta, (1890) 40 Ch. D. 543 : 60 L.T. 798 (C.A.) ... 512
Cook v. Lister, (1863) 32 L.J.C.P. 121 : 13 C. B. N. S. 543 : 7 L.T. 712 : 9 Jur. (N.S.) 823 : 1 W.R. 369 : 143 E.R. 215. 74, 182, 250, 328
——v. Wright, (1861) 30 L.J.Q.B. 321 : 1 B. & S. 559 : 7 Jur. (N.S.) 121 : 14 L.T. 704 : 121 E. R. 822 ... 62
——v. Seeley, (1848) 2 Ex. 746 : 17 L.J. Ex. 286 : 154 E.R. 691 ... 158
Cooke v. Clayworth, (1811) 18 Ves. 12 : 11 R.R. 137 ... 114
Cooper v. Cooper, (1888) 13 A.C. 88 : 59 L.T. 1 ... 502
Cooper v. Meyer, (1830) 10 B. & C. 468 : 8 L.J. (O.S.) K.B. 171 : 5 Man & R. 387 : 34 R.R. 493 : 109 E.R. 525 ... 198, 471
——v. Waldegrave, (1840) 2 Beav. 282 : 50 R.R. 182 : 48 E.R. 118 ... 507
Coore v. Callaway, (1794) 1 Esp. 115 ... 170
Copeland v. Davies, (1872) L.R. 5 H.L. 358 : 21 W.R. 1 ... 10
Cordery v. Colvin, (1863) 32 L.J.C.P. 210 : 14 C.B.N.S. 374 : 9 Jur. (N.S.) 1200 : 8 L.T. 245 : 142 E.R. 491 ... 312, 314, 415

PAGE.

Corporation Agencies v. Home Bank of Canada, (1927) A.C. 318: 136 L.T. 643: 96 L.J.P.C. 63: 158, 360, 488, 490
Cory v. Scott, (1820) 3 B. & Ald. 619: 106 E.R. 797 ... 397, 401
Cote, v. *Ex parte*, *Re* Deveye (1873) L. R. 9 Ch. 27: 43 L.J.Bk. 19: 29 L.T. 598: 22 W.R. 39: 17 Sol. Jo. 809 ... 218
County of Gloucester Bank v. Rudry, (1895) 1 Ch. 629 ... 117
Courtauld v. Sanders, (1867) 16 L.T.N.S. 562: 15 W.R. 906 ... 139
Coward v. Hughes, (1855) 1 K. & J. 443: 59 E.R. 533 ... 63
Cowasjee v. Thomson, (1845) 5 Moo. P.C. 165: 3 M.I.A. 422: 1 Sar. 298: 13 E.R. 454 ... 535
Cowie v. Halsall, (1821) 4 B. & Ald. 197: 3 Stark. 36: 106 E.R. 910 374
——v. Remfrey, 3 M.I.A. 448: 5 Moo. P.C. 232: 10 Jur. 789: 1 Sar. 302: 18 E.R. 570 ... 14, 19
——v. Stirling, (1856) 26 L.J.Q.B. 335: 6 E. & B. 333: 2 Jur. (N.S.) 663: 4 W.R. 543: 119 E.R. 889 ... 36, 37, 47,
Cox v. Troy, (1822) 5 B. & Ald. 474: 1 D. & R. 38: 24 R.R. 469: 106 E.R. 1264 ... 54, 217
——& Co. v. Pestonji & Co., 50 Bom. 656: 28 Bom. L.R. 1264: (1927) Bom. 13: 99 I.C. 489 ... 347, 373, 374, 580
Cragoe v. Jones, (1873) L.R. 8 Ex. 81: 42 L.J. Ex. 68: 28 L.T. 36: 21 W.R. 408 ... 188
Crears v. Hunter, (1887) 19 Q.B.D. 341: 56 L.J.Q.B. 518: 57 L.T. 554: 35 W.R. 821: 3 T.L.R. 756 ... 62
Crips v. Davis, (1843) 12 M. & W. 159: 13 L.J. Ex. 217: 67 R.R. 292: 152 E.R. 1152 ... 329
Cromwell v. Hynson, (1796) 2 Esp. 511 ... 305, 425
Crosse v. Smith, (1813) 1 M. & S. 545: 14 R.R. 529: 105 E.R. 204 ... 300, 399, 402
Crossley v. Ham, (1811) 13 East 498: 12 R.R. 410 ... 269
Crouch v. Credit Foncier Co., (1873) L.R. 8 Q.B. 374: 42 L.J.Q.B. 183: 29 L.T. 529: 21 W.R. 946 ... 12
Crew v. Clay, (1854) 9 Ex. 604: 23 L.J. Ex. 150: 2 W.R. 204: 18 Jur. 654: 96 R.R. 867: 156 E.R. 258 ... 288, 340, 537
Crowfoot v. Gurney, (1832) 9 Bing. 372: 2 M. & Scott 473: 2 L.J.C.P. 21: 131 E.R. 655 ... 46
Croxon v. Worthen, (1839) 5 M. & W. 5: 8 L.J. Ex. 158: 2 H. & H. 12: 3 Jur. 290: 151 E.R. 3 ... 312, 314, 315
Cruchley v. Clarance, (1813) 2 M. & S. 90: 14 R.R. 596: 105 E.R. 316 38, 97, 379, 586
Crumplin v. London Joint Stock Bank, Ltd., (1913) 19 Com. Cas. 69: 30 T.L.R. 99: 109 L.T. 856 ... 122, 488, 492
Crutchley v. Mann, (1814) 5 Taunt. 529: 2 Marsh. 29: 128 E.R. 796 97, 98
Cullianji v. Raghowji, 30 Bom. 27: 6 Bom. L.R. 879 ... 533
Cuming v. French, (1809) 2 Camp. 106 (notes) ... 314
——v. Shand, (1860) 29 L.J. Ex. 129: 5 H. & N. 95: 1 L.T. 300: 8 W.R. 182: 157 E.R. 1114 ... 155
Cundy v. Marriott, (1833 1 B. & Ad. 696: 9 L.J. (O.S.) K.B. 70: 35 R.R. 416: 109 E.R. 945 ... 535
Cunliffe Brooks & Co. v. Blackburn Dt. Building Benefit Society, (1864) 9 A.C. 857 ... 158

PAGE.

Cunniah v. Gopala Chettiar, 25 M.L.T. 242 : (1919) M.W.N. 613: 52 I.C. 879 ... 82
Cunningham Co., Ltd., *In re*, (1887) 36 Ch. D. 532 : 57 L.J. Ch. 169 : 58 L.T. 16 ... 119, 123, 129
Currie v. Misa, (1875) L.R. 10 Ex. 153 : 44 L.J. Ex. 94 : 23 W.R. 450 62, 64, 70, 208
Curtice v. London City and Midland Bank, (1908) 1 K.B. 293 : 77 L.J.K.B. 341 : 98 L.T. 190 ... 161, 356 358
Cuthburt v. Robarts Lubbock & Co., (1909) 2 Ch. 226 : 25 T.L.R. 8 L.C. J. 572 583 :9 : 100 L.T. 796 : 53 Sol. Jo. 559 ... 157

D

Dagdu v. Bhanna, 28 Bom. 420 : 6 Bom. L.R. 126 ... 256
Dahl v. Nelson Donkon & Co., (1866) 6 A.C. 38 : 50 L.J. Ch. 411 : 44 L.T. 381 : 29 W.R. 543 : 4 Esp. M.C. 332 (H. L.) (E.) ... 19
Daily Telegraph Newspaper v. Loughton, (1904) A. C. 776 ; 91 L.T. 233 : 20 T.L.R. 64 ... 163
Daimler Co. v. Continental Tyre and Rubber Co. (Great Britain) (1916) 2 A.C. 307 ... 115
Daivasigamony Pandara Sannadhi v. Kuppusami. 31 Mad. 47 : 17 M.L.J. 40 ... 547
Daji Abaji v. Govind, 10 Bom. L.R. 811 ... 134
Dalsukhram v. Kalidas, 26 Bom. 42 ... 131
Damodar v. Atmaram, 12 Bom. 443 : 8 Bom. L.R. 344 ... 597
——v. Ramnath, 34 Bom. L.R. 1327 ... 139, 141
——Das v. Benares Bank, 5 Pat. L.J. 536 : 58 I.C. 265 : 1 Pat. L.T. 691 ... 37, 47
——Das v. Muhammad Husain, 22 All. 351 ... 189
Darbishire v. Parker, (1895) 6 East 3 : 2 Smith 195 : 102 E. R. 1884. 402, 435, 436
Dargavarapu Sarrapu v. Rampratapu, 25 Mad. 580. ... 227, 290, 533, 536 538, 539, 544
Darnell v. Williams, (1817) 2 Stark. 166 : 19 R.R. 694 ... 208
Dass v. Rangasami, (1927) Rang. 188 : 103 I.C. 133 ... 66, 462
Dattaram v. Vinayak, 28 Bom. 181 ... 109
Daulatram v. Nagindas, 15 Bom. L.R. 333 : 19 I.C. 789 ... 61, 466
Davidson v. Cooper, (1844) 13 M. & W. 343 : 13 L.J. Ex. 276 : 1 D. & L. 377 : 67 R.R. 638 : 153 E. R. 1142 ... 370
——v. Stanley, (1841) 2 M. & Gr. 721 : 3 Scott (N.R.) 49 : 133 E.R. 936 ... 122, 123, 125
Davies v. Stainbank, (1854) 5 De G.M. & G. 679 : 106 R.R. 239 : 43 E.R. 1397 ... 186, 192
——v. Wilkinson (1839) 10 A. & E. 98 : 8 L.J.Q.B. 228 : 2 P. & D. 256 : 3 Jur. 405 : 113 E.R. 38 ... 35
Davis v. Clarke, (1844) 6 Q.B. 16 : 13 L.J.Q.B. 305 : 1 C. & K. 177 : 8 Jur. 688 : 66 R.R. 255 : 115 E.R. 6 46, 55, 91, 169,170, 537
——v. Reilly, (1898) 1 Q.B. 1 : 66 L.T.Q.B. 844 : 77 L.T. 399 : 46 W.R. 96
Davison v. Ropertson, (1815) 3 Dow. H.L. 218 ... 130, 498
Davlatram Shriram v. Bulakiddas Khemchand, (1869) 6 B.H.C.R. (O.C.J.) 24 ... 22, 263

PAGE.

Dawkes v. Deloraine, (1730) 3 Wills, 207 : 2 W.Bl. 782 : 95 E.R. 1015 43
Dawes v. Harness, (1875) L.R. 10 C.P. 166 : 44 L.J.C.P. 194 : 32 L.T. 159 : 23 W.R. 393 ... 251
Dawson v. Isle, (1906) 1 Ch. 633 : 95 L.T. 385 : 54 W.R. 452 ... 239
——v. Morgan, (1829) 9 B. & C. 618 : 7 L.J. (O.S.) K.B. 301 : 109 E.R. 230 ... 458
Dawson's Bank v. C. R. V. V. Chetti, 1 Rang. 121 ... 595
Day v. McLea, (1889) 22 Q.B.D. 610 : 58 L.J.Q.B. 293 : 60 L.T. 947 : 37 W. R. 483 ... 540
Day v. Nix, (1824) 9 Moore C.P. 159 : 2 L.J. (O.S.) C.P. 133 : 27 R.R. 708 ... 209
Dayaram v. Chandu Lall, 27 Bom. L.R. 1188 : (1925) Bom. 520 : 90 I.C.6 89 ... 584
De Tastet v. Baring, (1809) 11 East 265 ... 457
Dean v. Newhall, (1799) 8 T.R. 168 : 101 E.R. 1326 ... 347
Deb Kumar v. Anant Bandhu, 35 C.W.N. 26 : 131 I.C. 133 : (1931) Cal. 421 ... 260
Debendra v. Hemchandra, 31 Cal. 253 : 8 C.W.N. 135 ... 132
——Nath Sen v. Abdul Samed Seraji, 10 C.L.J. 150 : 1 I.C. 264 ... 73
Debb Prasad v. Kusum Kumari, (1930) Pat. 442 : 10 Pat. 63 ; 128 I.C. 133 ... 335
Debi Prasad v. Rupu, 6 All. 253 ... 579
Debtor, *Re*, (1903) 1 K.B. 705 : 72 L.J.K.B. 382 : 88 L.T. 401 : 51 W. R. 370 : 10 Manson 130 ... 65
——(1908) 1 K.B. 344 : 77 L.J.K.B. 409 : 98 L.T. 652 : 15 Manson 1. 536, 537
Debtor, *In re*, Cardon *Ex parte*, 52 S.J. 209 (C.A.) ... 16
Deep Sea Fishery Co's Claim : Fenwick Stobart & Co., *In re*, (1902) 1 Ch. 507 : 71 L.J. Ch. 321 : 86 L.T. 193 ... 401
De La Chaumette v. Bank of England, (1829) 9 B. & C. 208 : 7 L.J. (O.S.) K.B. 179 : 32 R.R. 643 : 109 E.R. 78 73, 218, 254, 507
——(1831) 2 B. & Ad. 385 : 9 L.J. (O.S.) K.B. 239 : 36 R.R. 599 : 109 E.R. 1186 ... 239
De Souza v. Coles, 3 M.H.C.R. 384 ... 216, 396
——v. Rangain, 6 M.H.C.R. 257 ... 538
Demand Drafts of the Imperial Bank, *In re*, 56 Cal. 233 ... 580
Dennis v. Morrice, (1800) 3 Esq. 158 ... 314
Dent v. Dunn, (1812) 3 Camp. 296 : 13 R.R. 809 ... 340, 341
Denton v. Peters, (1870) L.R. 5 Q.B. 475 : 23 L.T. 281 ... 84, 220, 222
Deo Dutt v. Maharaj Lal Behari, (1929) Oudh. 529 : 6 O.W.N. 902. 28
Deoraj Tewari v. Indrasan Tewari 8, Pat. 706 ... 604
Deuters v. Townsend, (1864) 33 L.J.Q.B. 301 : 5 B. & S. 613 : 10 L.T. 602 : 10 Jur. (N.S.) 702 : 12 W.R. 1002 : 122 E.R. 960 ... 275
Deva Chand v. Hirachand, 13 Bom. 449 ... 592, 597
——Ratna v. Fakir Adam, 4 Bom. L.R. 428 ... 28, 38
Devaji v. Ramkrishniah, 2 Mad. 173 ... 582
Devayens v. Noble, (1816) 1 Mer. 529 : 15 R.R. 151 : 35 E.R. 767 ... 160
Devenappa v. Umedmalji, 25 Bom. L.R. 604 ... 211, 217, 263
Devidas v. Shantsingh, (1931) Lah. 627 : 133 I.C. 652 : 32 P.L.R. 337. 190

PAGE.

Dey v. Mayo, (1920) 2 K.B. 346 (C.A.) : 122 L.T. 742 : 36 T.L.R. 217: 64 Sol. Jo. 240 : 89 L.J.K.B. 241 ... 66
——v. Pulling Engineering Co., (1921) 1 K.B. 77 ... 117, 119
Dhandi Ram v. Sadasukh, 42 Bom. 522 ... 481, 580
Dhaneswar v. Ramrup, 7 Pat. 845 ... 596
Dhanipal Das v. Maneshar Baksh Singh, 28 All 570 : 4 C.L.J. 1 : 1 M.L.T. 205 : 3 A.L.J. 495 : 9 O.C. 188 : 8 Bom. L.R. 491 : 10 C.W.N. 849 : 16 M.L J. 292 : 33 I.A. 118 ... 66, 116
Dhanji v, Taylor, 4 S.L R. 44 : 7 I.C. 604 ... 15, 16
Dhanput Singh v. Maharaj Jugut Indur, 4 W.R. 85 ... 20
Dharam Das v. Ganga Devi, 29 All. 773 : 4 A.L.J. 628 : (1907) A.W.N. 263 ... 25, 154
Dharasingh v. Gayanchand, 16 A.L.J. 441 : 45 I.C. 761 ... 110
Dhiraj v. Vikramajit, 3 All. 787 : (1881) 1 A.W.N. 57 ... 258
Dhiraj Singh v. Manga Ram, 19 All. 390 : (1897) A.W.N. 69 ... 547
Dhondbhat Narharbat v. Atmaram Moreshwar, 13 Bom. 669 ... 28
Dickinson, *In re*, Dickinson v. Lucas, (1909) 101 L.T. 27 ... 345, 346
Dickinson v. Valpy, (1829) 10 B & C. 128, 137 : 8 L.J. (O.S.) K.B. 51 : 5 Man. & R. 126 : 34 R.R. 348 : 109 E.R. 399 ... 119, 123, 129
Dil Mohamed v. Sain Das, (1927) Lah. 396 ... 189
Dillon v. Rimner, (1822) 1 Bing. 100 : 133 E.R. 41 ... 539
Dingwall v. Dunster, (1729) 1 Dougl. 247 : 99 E.R. 161 ... 345
Dixon, *Ex parte*, (1795) 2 Cox. 194 : 30 E.R. 90 : 6 T.R. 142 ... 35
——v. Bovill, (1857) 3 Macq. H.L. 1 : 2 Jur. (N.S.) 933: 4 W.R. 813 : 28 L.T. 130 ... 12, 35
——v. Johnson, (1855) 1 Jur. (N.S.) 70 ... 412
——v. Nutall, (1834) 1 Cr. M. & R. 307 : 3 L.J. Ex. 290 : 6 C. & P. 320 : 4 Tyr. 1013 : 149 E.R. 1097 ... 100, 283, 545
Diyalu Mal v. Nandu Shah, (1931) Lah. 691 : 100 I.C. 492 ... 189
Dobree v. Eastwood, (1827) 3 C. & P. 250 : (1828) 3 C. & P. 254 ... 439
Dod v. Edwards, (1827) 2 C. & P. 602 ... 274, 347, 387
Dolat Ram v. B. B. and C. I. Railway Co., 38 Bom. 659 : 16 Bom. L.R. 525 : 25 I.C. 380 ... 12
Doolarchand Shahoo v. Mohabeer Surum Ram, 19 W.R. 304 ... 184
Dorabji v. Muncherji, 19 Bom. 352, 359 ... 25, 155
Dorai Lal v. Sewak Ram, 13 A.L.J. 695 : 29 I.C. 983 ... 327, 541
Dossabhai v. Virchand, 27 Bom. L.R. 1 : 49 I.C. 388 ... 14, 78
Dowlat Ram v. Vitho Radhoji, 5 Bom. 188 ... 585
Downes v. Richardson, (1882) 5 B. & Ald. 674 : 1 D. & R. 352 : 24 R. R. 522 : 106 E. R. 1337 ... 379, 586
Drain v. Harvey, (1855) 17 C. B. 257 : 25 L.J.C.P. 81: 139 E. R. 1069. 464, 524
Drayton v. Dale, (1823) 2 B. & C. 293 : 2 L. J. (O. S.) K. B. 20 : 3 D. & R. 534 : 26 R. R. 356 : 107 E. R. 393 ... 116, 473
Drew v. Nunn, (1879) 4 Q. B. D. 661, 669 : 48 L. J. Q. B. 591 ... 114, 163
D'Sena v. T. M. Nair, 31 Mad. 364 ... 280, 431
Dubey Sahai v. Ganeshi Lal, 1 All. 34 ... 237
Dublin Wicklow & Walford Ry. Co. v. Slattery, (1878) 3 A. C. 1155, 1203 : 39 L. T. 365 : 27 W. R. 191 (H.L.) (Ir.) ... 468
Ducarry v. Gill, (1830) 4 C. & P. 121 ... 128

PAGE

Duck v. Mayen, (1892) 2 Q. B. 511 : 62 L. J. Q. B. 69 : 67 L. T. 547 : 41 W. R. 56 : 57 J. P. 23 (C. A.) ... 347
Duggumpudi Nagamma v. Peda Venkata Reddi, 12 L. W. 147 : 59 I. C. 363 ... 213
Dulmha Kanwar v. Mahadeo Prasad, 28 All. 436 : 3 A. L. J. 241 : (1906) A. W. N. 80 ... 29
Duncan v. Scott, (1807) 1 Camp. 100 ... 256
——Fox & Co. v. North & South Wales Bank, (1880) 6 A. C. 1,9,18: 50 L.J. Ch. 355 : 43 L. T. 706 : 29 W. R. 763 182, 183, 194, 288
——v. Schrempft & Bonke, (1915) 3. K. B. 355 ... 165
Dunn Ltd. v. Jefferson, 69 S. J. 725 ... 4, 95
Dunn v. O'Keefe, (1816) 5 M. & S. 282 : 17 R.R. 326 : 105 E.R. 1055. 397
Duraisami Reddi v. Muthial Reddi, 31 Mad. 458 ... 132, 141, 547
Durga Prasad v. Kalicharan, 64 I. C. 742 (Cal.) : 40 C. L. J. 84 ... 93, 100
Durgadas v. Kanshi Ram, 166 P. L. R. 1912 : 16 I. C. 769, 770 ... 177
Dutton v. Marsh, (1871) L. R. 6 Q. B. 361 : 40 L. J, Q. B. 175 : 24 L. T. 470 : 19 W. R. 754 ... 138, 141
Dwarkadas Ayodhiya Prasad v. Girdhari Lal. L. R. 4 All. 355 : 74 I. C. 692 : 1924 All. 129 ... 55

E

East v. Smith, (1847) 16 L.J.Q.B. 292 : 4 D. & L. 744 : 2 Bail. C.R. 23 : 11 Jur. 412 : 82 R. R. 968 : 9 L. T. 130 395, 397, 401, 404, 406
——India Co. v. Hensley, (1795) 1 Esp. 112 ... 123
——Indian Bank v. Khojah Vullie Goolwany, 1 Ind. Jur. N. S. 247. 19, 81
——of England Banking Co., *In re*, (1868) L. R. 4 Ch. 14: 6 Eq. 368 38 L. J. Ch. 121 : 19 L. T. 299 : 17 W. R. 18 306, 309, 319, 337
East Indian Society v. T. M. Nair, 31 Mad. 364 : 18 M.L.J. 465 : 4 M. L.T. 89 ... 351
Easten v. Pratchett, (1835) 1 Cr. M. & R. 798, 808 : 4 L. J. Ex. 335 4 D. P. C. 549 : 1 Gale 250 : 5 Tyr. 1129 : 149 E. R. 1302 ... 65, 201
Eastwood v. Kenyon, ((1840) 11 A. & E. 438 : 9 L. J. Q. B. 409 : 3 P. & D. 276 : 4 Jur. 1081 : 52 R. R 400 : 113 E. R. 482 ... 63
Eaton v. Bell, (1821) 5 B. & Ald. 34 : 106 E. R. 1106 ... 138
Ebrahim v. Chas Cowie & Co., 5 L. B. R. 195 : 8 I. C. 967 ... 533, 536
Eddison v. Collingridge, (1850) 9 C. B. 570 : 19 L. J. C. P. 268 : 14 Jur. 869 : 137 E. R. 1014 ... 44
Ede v. Canto Nath Shaw, 3 Cal. 220 ... 374, 381
Edelstein v. Schuler & Co., (1902) 2 K, B. 144, 154 : 71 L. J. K. B. 572 : 97 L.T. 204 : 50 W. R. 493 : 18 T. L. R. 597: 46 Sol. Jo. 500 7 Com. Cas. 172 ... 13, 14, 19
Edie v. East India Co., (1761) 2 Burr. 1216, 1225 : Black. 295 : 97 E. R. 797 ... 118, 237, 238
Edinburgh Ballart Co. v. Sydney, (1891) 7 T. L. R. 656 ... 198
Edis v. Bury, (1827) 6 B. & C. 433 : 6 L. J. (O. S.) K. B. 179 : 9 D. & R. 492 : 2 C. H. 559 : 30 R. R. 389 : 108 E. R. 511 ... 89
Edmunds P. O. v. Bushell, (1865) L. R. 1 Q. B. 97 : 35 L. J. Q. B. 20 : 12 Jur. (N. S.) 332 123, 124, 127, 128, 170

PAGE.

——v. Edmunds, (1904) P. 362 : 73 L. J. P. C. 97 : 91 L. T. 568 ... 163
Edwards v. Chancellor, (1888) 52 J. P. 454 ... 63, 539
——v. Dick, (1821) 4 B. & Ald. 212 : 23 R. R. 255 : 105 E. R. 915 ... 257
——v. Porter, (1923) 1 K. B. 268 : on appeal (1925) A. C. 1 (H. L.). 134
——v. Walters, (1896) 2 Ch. 157, 159, (C.A.) 65 L.J. Ch. 557: 74 L.T. 395 : 44 W.R. 547 : 12 T.L.R. 359: 40 Sol. Jo. 477 ... 291, 340, 345, 346
Egg v. Barenett, (1800) 3 Esp. 196 ... 50, 159
Elford v. Teed, (1813) 1 M. & S. 28 : 105 E. R. 11 ... 293
Ellesmere Brewery & Co. v. Cooper, (1896) 1 Q. B. 75 : 65 L. J. Q. B. 103 : 73 L. T. 567 : 44 W. R 254 ... 376
Elliot v. Bax-Ironside, (1925) 2 K. B. 301 (C. A.) 139, 141, 143, 527
——v. Crutchley, (1906) A. C. 7 : 75 L. J. Q. B. 147 ; 94 L. T. 5 ... 202
——v. Davis, (1800) 2 Bos. & P. 338 : 87 L. J. K. B. 531 : 118 L. T. 181 : 34 T. L. R. 208 ... 133
Ellis v. Galindo, (1784) 1 Dougl. (K. B.) 250 (n) ... 329
——v. Mason, (1839) 7 Dowl. P. C. 598 : 8 L. J. Q. B. 196 : 3 Jur. 406 ... 28, 30, 31
Ellston v. Deacon, (1866) L. R. 2 C. P. 20 ... 130
"Elmville" The, (1904) P. 319: 73 L.J.P.C. 104: 91 L.T. 151 ... 44, 137, 413, 438
Elumalai v. Balakrishnan, 44 Mad. 965 : 41 M.L.J. 297 : (1921) M.W.N. 704 : 14 L.W. 379 : 66 I.C. 168 : (1922) Mad. 344 ... 82
Elwell v. Jackson, (1884) Cab. & E. 362 ... 163
Emanuel v. Robarts, (1863) 9 B. & S. 121 : 17 L.T. 646 ... 154
Embiricos v. Anglo-Austrian Bank, (1905) 1 K.B. 677 (C.A.) : 74 L.J.K.B. 326 : 93 L.T. 305: 53 W.R. 306: 21 T.L.R. 268 : 49 Sol. Jo. 281 : 10 Com. Cas. 99 ... 230, 501, 506
Emperor v. Kallumal, Emperor v. Ghulzari Lal, (1903) A.W.N. 174. 36
——v. Pannalai, 24 A.L.J. 358 : 93 I.C. 694 ... 602
Empress v. Kola Lalang, 8 Cal. 214 ... 16
Empress Engineering Co., *In re*, (1880) 16 Ch. D. 125 : 43 L.T. 742. 135
English Bank of the River Plate, *In re*, *Ex parte*, Bank of Brazil, (1893) 2 Ch. 438 : 62 L.J. Ch. 578 : 69 L.T. 14 : 41 W.R. 521 ... 420, 455
Ertel Bieber & Co. v. Reo Tinto Co., (1918) A.C. 260 ... 115
Esdaile v. Sowerby, (1809) 11 East 114, 117 : 10 R.R. 440 : 130 E.R. 948 ... 287, 403
Esdale v. La Nauze, (1835) 1 Y. & C. 394 : 4 L.J. Ex. 46 : 41 R.R. 229 : 160 E.R. 160 ... 123
Evans v. Cramlington, (1687) 2 Show K.B. 509 : Carth. 5 : 89 E.R. 1070 : 2 Vent. 307 ... 238
——v. Whyle, (1829) 5 Bing. 485 : 7 L.J. (O.S.) C.P. 205 : 3 M. & P. 130 : M. & M. 468 : 130 E.R. 1148 ... 227
Everard v. Watson, (1853) 1 E. & B. 801 : 22 L.J.Q.B. 222 : 17 Jur. 76 : 93 R.R. 402 : 118 E.R. 636 ... 404, 405
Ewin v. Lancaster, (1865) 6 B. & S. 571 : 12 L.T. 632: 13 W.R. 857 : 122 E.R. 1306 ... 387
Ewing Co. v. Gosidas Ghose, 3 B.L.R. (App.) 7 ... 570
Eyles v. Ellis, (1827) 4 Bing. 112 : 5 L.J. (O.S.) C.P. 110 ... 160

PAGE.

F

Fairclough v. Pavia, (1854) 9 Exch. 690 : 23 L.J. Ex. 215 : 2 C.L.R. 1099 : 96 R.R. 920 : 156 E.R. 296 ... 180, 231
Faith v. Richmond, (1840) 11 A. & E. 339 : 9 L.J.Q.B. 97 : 2 P. & D. 187 : 52 R.R. 367 : 113 E.R. 444 ... 132
Fancourt v. Thorne, (1846) 9 Q.B. 312 : 15 L.J.Q.B. 244 ... 35
Fanindra v. Kachaman, 45 Cal. 774 ... 33, 62, 525
Fanshawe v. Peet, (1857) 26 L.J. Ex. 314 : 2 H. & N. 1 : 5 W.R. 489 : 157 E.R. 1 ... 380
Fareeks v. Atkins, (1893) 10 T.L.R. 178 ... 96
Farmer's Bank v. Vanmeter, 4 Rand 553 (Amer.) ... 318
Farquhar v. Southey, (1826) M. & M. 14 : 2 C. & P. 497 : 31 R.R. 689 345, 346, 380, 586
Farr v. Ward, (1837) 2 M. & W. 844 ... 96
Farrows Bank, *In re*, (1922) 1 Ch. 41 ... 494
Fatechand Harchand v. Kishen, 18 Bom. 614 ... 596
Fathuma v. Hanumantha Rao, 17 M.L.J. 296 ... 336
Fatima Bibi v. Mohideen, 4 Rang. 551 ... 139
Fearn v. Filicia, (1844) 7 M. & Gr. 513 : 14 L.J.C.P. 15 : 18 Scott N.R. 241 : 135 E.R. 206 ... 123, 134
Fenn v. Harrison, (1790) 3 T.R. 757 : 100 E.R. 842 122, 123, 226, 227, 238
Fenton v. Blackwood, (1874) L.R. 5 P.C. 167 : 22 W.R. 562 ... 539
Fentum v. Pocook, (1813) 5 Taunt. 192 : 1 Marsh. 14 : 128 E.R.660... 181, 191, 205
Fenwick Stobart & Co., *Re.*, (1902) 1 Ch. 507 : 71 L.J. Ch. 321 : 86 L.T. 193 ... 397, 416
Ferguson v. Umchand, 33 Cal. 343. ... 123
Ferris v. Bond, (1821) 4 B. & Ald. 679 : 23 R.R. 443 : 106 E.R. 1085. 33
Field v. Carr, (1828) 5 Bing. 13 : 6 L.J. (O.S.) C.P. 203 : 2 M. & P. 46 : 130 E.R. 964 ... 74, 325
Fielder v. Marshall, (1861) 30 L.J.C.P. 158 : 9 C.B.N.S. 686 : 7 Jur. (N.S.) 777 : 3 L.T. 858 : 142 E.R. 238 ... 55, 89, 169
Fielding & Co. v. Corry, (1898) 1 Q.B. 268 : 67 L.J.Q.B. 7 : 77 L.T. 453 : 46 W.R. 97 : 14 T.L.R. 35 : 42 Sol. Jo. 45 ... 157, 403, 490
Firbank v. Bell, (1817) 2 B. & Ald. 36 : 106 E.R. 14 ... 557
Firm M. N. P. L. v. Kirwan Gyan, 5 Bur. L.T. 162 : 17 I.C. 915 ... 95, 96
Firm Nanakchand v. Firm Ram Sarup, (1924) Lah. 684 ... 30
Firm of Hazari Lall Chhangamal v. Sohon Lall, 75 I.C. 609 ... 138
Firth v. Brooks, (1861) 4 L.T.N.S. 467 ... 433
——v. Thrush, (1828) 8 B. & C. 387 : 6 L.J. (O.S.) K.B. 355 : 2 Man. & Ry. 359 : 32 R.R. 421 : 108 E.R. 1086 ... 399, 409
Fisher v. Calvert, (1879) 27 W.R. 301 ... 43, 575
——v. Leslie, (1795) 1 Esp. 426 ... 28
Fitch v. Jones, (1855) 5 E. & B. 238 : 24 L.J.Q.B. 293 : 1 Jur. (N.S.) 84 : 3 W.R. 507 : 103 R.R. 455 : 119 E.R. 470 ... 102, 528
Fleming v. Bank of New Zealand, (1900) A.C. 577, 584 : 69 L.J.P.C. 120 : 83 L.T. 1 62, 154, 156, 164, 462
——v. Simpson, (1806) 1 Camp. 40 (n) ... 210
Fletcher v. Froggatt, (1827) 2 C. & P. 569 ... 312, 314

PAGE.

——v. Manning, (1844) 12 M. & W. 571 : 13 L.J. Ex. 150 : 1 Car. & K. 350 : 152 E.R. 1326 ... 50, 150

Flight v. Reed, (1863) 1 H. & C. 703 : 33 L.J. Ex. 265 : 9 Jur. (N.S.) 1016 : 8 L.T. 638 : 158 E.R. 1067 : 12 W.R. 53 ... 539

Flower v. Sadler, (1882) 10 Q.B.D. 572 (C.A.) ... 260

Foakes v. Beer, (1884) 9 App. Cas. 605 : (H.L.) 54 L.J.Q.B. 130 : 51 L.T. 833 : 33 W.R. 233 ... 330, 539

Foley v. Fletcher, (1858) 3 H. & N. 769, 777 : 28 L.J. Ex. 100 : 157 E.R. 678, 681 : 5 Jur. (N.S.) 342 : 7 W.R. 141 ... 531

Foley v. Hill, (1848) 2 H.L.C. 28 : 13 L.J. Ch. 182 : 8 Jur. 347 : 81 R.R. 14 : 9 E.R. 1002 ... 25, 154

Follet v. Moore, (1849) 4 Ex. 410 : 19 L.J. Ex. 6 : 14 L.T. 158 : 154 E.R. 1272 ... 29, 35

Forbes v. Marshall, (1855) 11 Ex. 166 : 24 L.J. Ex. 305 : 3 W.R. 480 : 105 R.R. 471 : 156 E.R. 788 ... 91, 133

Forbes, Forbes Campbell & Co. v. Official Assignee, 27 Bom. L. R. 34 : 86 I.C. 118 : (1925) Bom. 173 ... 79, 236, 240

Ford v. Beech, (1848) 11 Q.B. 852, 867 : 17 L.J.Q.B. 114 : 116 E.R. 693 : 5 D. & L. 610 : 12 Jur. 310 : 75 R.R. 638 ... 531

Forman v. Jacob, (1815) 1 Stark. 47 ... 128

——v. Wright, (1851) 11 C.B. 481 : 20 L.J.C.P. 145 : 15 Jur. 706 : 87 R.R. 731 : 138 E.R. 560 ... 202

Foster v. Dawber, (1851) 6 Ex. 839, 851 : 20 L.J. Ex. 385 : 86 R.R. 506 : 155 E.R. 785 ... 346, 347, 387

——v. Driscoll, (1929) 1 K.B. 417 : 98 L.J.K.B. 282 : 140 L.T. 479 : 45 T.L.R. 185 372, 373, 379, 381

——v. Jolly, (1835) 1 Cr. M. & R. 703 : 5 Tyr. 239 : 1 Gale 10: 4 L.J. Ex. 65 : 40 R.R. 685 : 149 E.R. 1263 ... 523

——v. Mackinnon, (1869) 4 L.R.C.P. 704 : 38 L.J.C.P. 310 : 20 L.T. 887 : 17 W.R. 1105 95, 254, 255, 266

Fox v. Clifton, (1830) 6 Bing. 776, 795 : 4 M. & P. 676 : 8 L.J. (O.S.) C.P. 257 : 31 R.R. 536 : 130 E.R. 1479 ... 129

——Walker & Co., *In re*, *Exparte* Bishop, (1880) 15 Ch. D. 400 : 50 L.J. Ch. 18 : 43 L. T. 165 : 29 W.R. 144 ... 87

Framroz v. Mahomed Essa, 50 Bom. 266 : 28 Bom. L.R. 141 : 94 I.C. 21 : (1926) Bom. 241 ... 93, 336, 337

France v. Clark, (1884) 26 Ch. D. 257, 272 : 52 L.J. Ch. 362 : 48 L.T. 185 : 31 W.R. 274 affirmed in C.A. (1884) W.N. 43 : 53 L.J. Ch. 585 : 50 L.T. 1 : 32 W.R. 466 ... 98, 99

Francke and Rasch, *In re*, (1918) 1 Ch. 470 ... 307, 320, 508

Fry v. Hill, (1817) 7 Taunt. 397 : 18 R R. 512 : 129 E.R. 158 ... 280

——v. Smellie, (1912) 3 K.B. 282 ... 68

Fuller v. Glyn, Mills, Currie & Co., (1914) 2 K.B. 168 : 83 L.J.K.B. 764 : 110 L.T. 318 : 30 T.L.R. 162 : 58 Sol. Jo. 235 : 19 Com. Cas. 186 ... 68

——v. Smith, (1924) Ry. & M. 49 : 1 C. & P. 197 : 28 R.R. 772 ... 225

Fullerton v. Provincial Bank of Ireland, (1930) A.C. 309 : 72 L.J. P.C. 79 : 89 L.T. 79 : 52 W.R. 238 ... 62

Furze v. Sharwood, (1841) 2 Q.B. 388 : 11 L.J.Q.B. 119 : 2 G. & D. 116 : 6 Jur. 554 : 114 E.R. 154 ... 128, 406

Fydell v. Clark, (1796) 1 Esp. 447 ... 227

PAGE

G I. P. Ry. v. Hanmandas, 14 Bom. 57 ... 12
Gadd v. Provincial Union Bank, (1909) 2 K. B. 553 : 78 L. J. Q. B. 815 : 101 L. T. 219 : on appeal, *Sub nomine* Kirkwood v. Gadd, (1910) A C. 422 : 79 L. J. K. B. 815 : 102 L. T. 753 : 54 Sol. J. 599 ... 16
Gaden v. Newfoundland Savings Bank, (1899) A. C. 281 : 68 L. J. P. C. 57 : 80 L. T. 329 ... 52, 160, 470
Gadu Bibi v. Parsotam, 10 All. 418 .. 131
Galstaun v. Hutchinson, 39 Cal. 789 ... 604
Ganapathi v. Munisami, 5 I. C. 754 (Mad.) 7 M. L. T. 81 : 33 Mad. 159 ... 63, 463
——v Sundararaja, (1929) M. W. N. 828 ... 258
Ganes Das Ram Narayan v. Lachmi Narayan, 18 Bom. 570 ... 22
Ganesh v. Vishnu, 32 Bom. 37 : 9 Bom. L R. 1164 ... 66
Ganga Prasad v. Hira Lal, 39 All. 86 : 14 A. L. J. 1166 ... 103
——v. Ramdayal, 23 All. 502 ... 28
Gangadas v. Jenison Das, 25 Bom. L. R. 520. ... 261
Gangaram v. Lachiram, 19 C. W. N. 611 : 28 I. C. 746 (Pat.) ... 31
Ganpat v. Sopana, 52 Bom. 88 (F. B.) : 30 Bom. L.R. 1 : 107 I. C. 257 : (1928) Bom. 35 ... 336, 337
Ganpat Rai v. Muni Lal, 34 All. 135 : 9 A. L. J. 54 : 13 I. C. 94 ... 131
——Prasad v. Sarju, 34 All. 168 : 9 A. L. J. 8 : 13 I. C. 34 ... 144
Ganpet Balaji Kale v. Narayan Sarvobiram, (1924) Bom. 301 ... 548
Gardner v. Walsh, (1855) 5 E. & B. 83 : 24 L. J. Q. B. 285 : 1 Jur (N. S.) 828 : 3 W. R. 460 : 103 R. R. 377 : 119 E. R. 412. 376
Garnett v. M'Kewan, (1872) L. R. 8 Ex 10 : 42 L. J. Ex 1 : 27 L. T. 560 : 21 W. R. 57 : 12 M & W. 618 ... 154, 157
——v. Woodcock, (1817) 6 M. & S. 44 : 1 Stark. 475 : 18 R R. 298 : 105 E. R. 1159 ... 293
Garrard v. Cottrell, (1847) 10 Q. B. 679 : 116 E. R. 258 ... 458
——v. Lewis, (1882) 10 Q. B. D. 30, 32, 35 : 47 L. T. 408 : 31 W. R. 475 ...92, 97, 99, 254
Gaura v. Ramachandran, 4 Luck. 480 ... 565
Gay v. Lander, (1848) 6 Dow. & L. 75 : 17 L. J. C. P. 286 : 6. C. P. 336 : 12 Jur. 678 : 77 R. R. 338 : 136 E. R. 1281 ... 37
Gaya Din v. Sri Ram, 15 A. L. J. 267 : 39 All. 364 : 39 I. C 649 ... 316, 412
Gaziram v. Jailal, 13 I. C. 319 : 79 P. R. 1912 ... 260
Geary v. Physic, (1826) 5 B. & C. 234 : 7 D. & R. 653 : 4 L. J. (O. S.) K. B. 147 : 29 R. R. 225 : 108 E. R. 87 ... 27, 31, 83
Gelmini v. Moriggia, (1913) 2 K. B. 549 : 82 L. J K. B. 949 : 109 L. T. 77 : 29 T. L. R. 486 ... 396
Genda Lal v. Balkishen, (1922) All. 422 ... 316, 318
General Estates Co., *In re*, (1868) 3 Ch. App. 758 : 18 L. T. 894 : 16 W. R. 919 ... 80
——South American Co., *In re*, (1877) 7 Ch. D. 637, 644 : 47 L. J. Ch. 67 : 37 L. T. 599 : 26 W. R. 232 ... 456, 457

PAGE

George, *Re*, Francis v. Bruce, (1890) 44 Ch. D. 627 ; 59 L. J. Ch. 709 : 63 L T. 49 : 38 W. R. 617 : 6 T. L. R. 309 ... 93, 291, 346
George v. Surrey, (1830) 1. M. & M. 516 : 31 R. R. 755 ... 31
Georgier v Mievile, (1824) 3 B. & C. 45 : 4 D. & R. 641 : 2 L J (O. S.) K. B. 206 : 107 E. R. 651 ... 12
Gerald Mc. Donald & Co. v. Nash & Co , (1924) A. C. 625 ... 233
Geralopulo v. Wieler, (1851) 10 C. B. 690 : 20 L. J. C. P. 105, 108 : 15 Jur. 316 : 138 E. R. 272 : 84 R. R. 762 ... 429, 450
Ghaniyalal v. Karamchand, 10 Lah. 755 : 115 I. C. 860 : (1929) Lah. 240 290, 291, 297, 298
Ghanshiam Das v. Mithan Lal, (1930) A. L. J. 1042 : 124 I. C. 763 : (1930) All. 529 ... 524
Ghasiram v. Raja Mohun Bikram, 6 C. L. J 639 ... 122, 135
Ghausiram Lalji v. Ram Narain, 29 All. 33 (P. C.) : 17 M. L. J. 35 : 5 C. L. J. 7 : 9 Bom. L. R. 1 ... 336
Ghazaffar Hussain v. Mahabir Prasad, 17 I. C. 309 (Oudh) ... 333
Ghulam v. Ram Ditta, (1930) Lah. 248 : 122 I. C. 101 60, 74, 180, 236, 289, 827
Ghulam Mohi-ud-deen v. Deokia Nand, 22 I. C. 393 : 57 P. W. R. 1914 : 54 P. L. R. 1914 : 39 P. R. 1914 ... 259
Ghulamsa Rowther v. Viswanathan Chetty, (1917) M. W. N. 344 ... 17, 128, 544
Gibb v. Mather, (1822) 8 Bing. 214, 220 : 2 C. & J. 254 : 1 L. J. Ex. 87 : 1 Moo. & S. 387 : 2 Tyr. 189 : 34 R. R. 688 : 149 E. R 110 ... 297, 298
Gibbon v. Coggon, (1809) 2 Camp. 188 : 11 R. R. 698 ... 314, 426
Gibbons v. Vonillon, (1849) 8 C. B. 483 : 19 L. J. C, P. 74, 82 : 7 D & L. 266 : 14 Jur. 66 : 137 E. R. 596 ... 531
Gibbs v. Freemont, (1853) 9 Ex. 25 : 22 L. J. Ex. 302 : 17 Jur. 820 : 1 W. R. 482 : 96 R. R. 526 : 156 E. R. 11 ... 174, 507, 508
Gibson v. Hunter, (1794) 7 H. Bl. 288 : 6 Bro. P. C. 255 : 12. E. R. 1064 ... 199
——v. Minet, (1791) 1 H. Bl. 569 : 3 T. R. 481 : 2 Bro. P. C. 48 : 1 R. R. 754 : 100 E. R. 689 ... 199
Gilbert v. Wetherell, (1825) 2 Sim. & St. 254 ... 344
Giles v. Browne, (1817) 6 M. & S. 73 : 2 Chit. 300 : 105 E. R. 1170 ... 39, 106
Gill v. Cubitt, (1824) 5 Dowl. & R. 324 : 3 B. & C. 466 : 3 L. J. (O. S.) K. B. 48 : 107 E. R. 806 ... 69
Gillett v. Bank of England, (1889) 54 J. P. 7 : 6 T. L. R. 9 ... 213
——v. Whitmarsh, (1846) 8 Q. B. 966, 969 : 15 L. J. Q. B. 291 : 10 Jur. 904 : 115 E. R. 1138 ... 523
Girdhari Das v, Jaganath, 3 All. 115 ... 592
Girindra v. Khir Narayan Das, 36 Cal. 394 : 9 C. L. J. 266 13 C. W. N. 1004 : 1 I. C. 49 ... 567
Gladwell v. Turner, (1870) 5 Ex. 59, 61 : 39 L. J. Ex. 31 : 21 L. T. 674 : 18 W. R. 155 ... 413, 438
Glasscock v. Balls, (1889) 24 Q. B D. 13 : 59 L. J Q. B. 51 : 62 L. T. 163 : 38 W. R. 155 : 6 T. L. R. 57 249, 271, 326, 530

PAGE

Glenie v. Bruce Smith, (1907) 2 K B. 507 :
on appeal, (1908) 1 K. B 263, 77 L. J. K. B. 113, 98 L. T. 515 :
24 T. L. R. 177 ... 96, 243, 247
——v. Imri, (1839) 3 Y. & C, 436 : 3 Jur. 432: 160 E. R. 773 ... 210
Glossop v. Jacob, (1815) 4 Camp. 227 : 1 Stark. 69 465
Gobind Ram Marwary v. Mathoora Saboya, 3 Cal. 339 152 398
Gobinda Kumar v. Ramchandra, 29 C. L. J 508 ... 562
Goddard v. O'brien, (1882) 9 Q. B. D. 37 : 46 L. T. 306 :
30 W. R. 549 .. 330, 540
Godla Thammya v. Narasimulu, 3 Rang 227 : (1925) Rang. 283 :
89 I. C. 657 ... 372, 375
Goggerly v. Cuthbert, (1806) 2 Bos. & P. N. R. 170 : 9 R. R. 632 :
127 E. R. 589 ... 222
Gogun Chander Ghose v. Dhuronoth Mandal, 7 Cal. 616:
9 C. L. R. 257 ... 370
Gokuldas v. Paramanand, 6 N. L. R. 125 : 8 I. C. 281 ... 595
Gokuldas Narain Sukhdas v. Radhakisan, 54 I. C. 3 (Lah.) ... 97, 98
Goldfarb v. Bartlett (1920) 1 K B. 639, 648 : 89 L. J. K. B. 258 :
122 L. T. 588, 64. Sol. Jo. 210 ... 189, 396, 539
Goldman v. Cox, 40 T. L. R. 744 (C. A.) : 69 S J. 10 ... 254, 331
Goldshede v. Cotterell (1836) 2 M & W. 20 : 6 L. J. Ex 26 :
150 E. R. 651 ... 533
Goldsmid v. Hampton, (1858) 5 C B N. S. 94 : 27 L. J. C. P. 286 :
4 Jur. (N. S) 1108: 116 R. R. 578 : 141 E. R. 37 ... 45, 99
Gomersall, *Re*, (1875) 1 Ch. D. 137 ... 258
Gompertz v. Bartlet, (1853) 21 L. J. Q. B 65 ; 2 E. & B. 849 :
2 C. L. R. 395 : 18 Jur. 265 : 2 W. R 43 : 95 R R. 851 ;
118 E. R. 985 ... 226
Gooch, *In re*, (1921) 2 K. B. 593 ... 96, 243, 247
Good v. Walker, (1892) 61 L. J. Q. B. 736 : 8 T. L. R 776 :
36 Sol. Jo. 713 ... 213
Goodall v, Dolley, (1787) 1 T. R. 712 : 1 R. R. 372 : 99 E. R. 1336 313, 315
——v. Polhill, (1845) 14 L. J. C. P 146 : 4 L. T. 335 :
135 E. R. 528. 409, 415, 439, 452
Goodman v. Harvey, (1836) 4 A & E. 870 : 6 N. & M. 372 :
6 L. J. K. B. 260 : 43 R R. 537 : 111 E. R 1011 ... 67, 426
Goodwin v. Coates, (1832) 1 Moo. & Rob. 221 ... 521
——v. Robarts, (1875) L. R. 10 Ex. 76 : 32 L. T. 199 : in Ex. Ch. L.R.
10 Ex, 337 : 44 L J. Ex. 157 : 33 L. T. 272 :
in H.L. (1876) 1 A.C. 476 : 45 L. J. Q B. 748 : 35 L. T. 179 :
24 W. R. 987 ... iv 12, 13, 538
Gopal v. Dhondya, 14 I. C 685 : ... 566
Gopal Chand v. Sir Jacob Behrens & Sons, (1930) Lah 640 :
31 P. L. R. 77 : 123 I. C. 118 ... 165
Gopal Chand Marwaree v. Thakurani Mohokoom Kooaree,
3 Cal. 314 : 2 C. L. R. 412 ... 595
——Dass v. Seeta Ram, 3 Agra 268 19, 20, 174, 398

PAGE

——Row v. Veerappan, 22 M. L. J. 121 : 13 I. C. 95 : 10 M. L. T. 522. 38, 379
Gopala v. Paramma, 7 Mad. 583 ... 548
——Aiyengar v. Venkatakrishna Aiyengar, 26 M. L. J, 224 : 23 I. C. 612 59, 146, 147, 542
Gopalachariar v. Mayappa Chettiar, (1918) M W. N. 177 : 8 L. W. 501 ... 17, 94
Gopala Padayachi v. Rajagopala Naidu, (1926) M. W. N. 757 : 98 I. C. 75 : (1926) Mad. 1148 : ... 533, 597, 598
Gopinath v. Abbas Hossein, 7 B. L. R. 434 (note) ... 398
Gordhandas v. Harivalubhdas, 21 Bom. 281 ... 109
Gordon v. London City and County Midland Bank, (1902) 1. K. B. 242, 270, 272 ; on appeal (1903) A. C. 240 : 72 L. J. K. B. 451 : 88 L. T. 574 ; 51 W. R 671 : 19 T. L. R. 462 : 8 Com. Cas. 221 365, 478, 480, 493, 496
Gore v. Gibson, (1845) 13 M. & W. 623 : 14 L. J. Ex. 151 : 9 Jur. 140 : 67 R. R. 762 : 153 E. R. 260 ... 114
Goss v. Nelson, (1757) 1 Bur. 226 : 1 Ken. 498 : Bull. 273 : 97 E. R. 286 ... 44
Gough v. Findon, (1851) 7 Exch. 48 : 155 E.R. 850 : 21 L J. Ex. 58 ... 218
Gould v, Coombs, (1845) 1 C. B. 543 : 14 L. J. C. P. 175 : 9 Jur. 494 : 135 E. R. 653 ... 28, 596
——v. Robson, (1807) 8 East, 576 ; 9 R. R. 498 : 103 E. R 463 ... 189, 190, 539
Goupy v. Harden, (1816) 7 Taunt, 159 : 2 Marsh 454 : N. P. Holt. 342 : 17 R. R. 478 : 129 E. R. 64 ... 246, 281
Gourchandra Das v. Prasanna Kumarchandra. 33 Cal. 812,816 : 3 C. L. J. 363 : 10 C. W. N. 783 370, 372, 376, 383
Goursimull v. Dhansukdas, 7 B. L. R. 289, 292 (note) ... 21, 65, 263
Govind v. Balwant Row, 22 Bom. 986 ... 28, 29
Govinda v. Mayodas, 28 P. L. R. 1884 ... 71
Govindan Nair v. Nana Menon, 27 M. L. J 595 : (1914) M. W. N. 782 : 26 I. C. 750 ... 140, 545, 546
Govindasami v. Kuppusami, 12 Mad. 239 ... 372
Govindass Chaturbujdoss v. Sakdevdass, 23 L W. 105 ... 250
Govindjee v. Ko Po Yee, 4 Bur. L. T. 203 : 11 I. C. 891 ... 333
Graves v. Key, (1832) 3 B. & Ad. 313, 319 : 110 E. R. 117 ... 272
Gray v Johnston, (1868) L. R. 3 H. L. 1 : 16 W. R. 842 ... 158
——v Milner, (1819) 8 Taunt. 739 : 3 Moore C. P. 90 : 2 Starke 336 : 21 R. R. 525 : 129 E. R. 571 ... 45, 55, 170
——v. Raper, (1866) L. R. I. C. P. 694 : 14 W. R. 780 ... 139
Great Western Railway v. London County Bank, (1901) A.C. 414, 420, 421 : 70 L. J. K B 915 : 85 L. T. 152 : 50 W. R. 50 : 6 Com. Cas 275 : 17 T L. R. 700 : 45 Sol. Jo. 690 51, 482, 483, 494,497
Green H. j. v. Ba Lon, 12 Bur. L. T. 16 : 51 I. C. 537 ... 65
Green v. Croft, (1792) 2 H. Bl. 30 ... 341
——v. Davies, (1825) 4 B. & C. 235 : 3 L. J. (O. S.) K. B. 185 : 6 D. & R. 306 (N. P.) : 1 C. & P. 451 : 107 E. R. 1046 : 28 R. R. 230 ... 592

PAGE

Greenough v. M. Clelland, (1860) 30 L. J. Q B. 15 : 2 E & E. 424 : 6 Jur. (N. S.) 772 : 2 L. T. 571 : 8 W. R. 612 : 121 E. R. 159 ... 186, 191
Greenslade v. Dower, (1828) 7 B & C. 635 ; 6 L. J. (O. S.) K. B. 155 : 1 Man. & Ry. 648 : 31 R. R. 272 : 108 E R. 860 ... 129
Greenwood v. Martin's Bank Ltd., (1932) I. K. B. 371 : 101 L. J. K. B. 33 : 146 L. T. 32 : 37 Com. Cas. 1 : 47 T. L. R. 609 : affirmed in H. L. (1932) W. N. 178 : 48 T. L. R. 601 ... 265, 363
Grew v. Bewan, (1822) 3 Stark 134 ... 257
Grey v. Cooper, (1782) 3 Doug. 65 : 99 E. R. 541 ... 112
Griffin v. Weatherby, (1868) L. R. 3 Q B. 753 : 37 L. J. Q. B 280 : 9 B & S. 726 : 18 L. T. 881 : 17 W R. 8 ... 44, 288, 580
Grob v. Palmer, 1 Ind. Jur. N. S 395 ... 570
Groom v. Wilson, 3 Cal. 539 ... 537
Guaranty Trust Co. of New York v. Hannay & Co., (1918) 1 K. B. 43, 45 ; on appeal (1918) 2 K. B. 623 : 87 L.J. K. B. 1223 ; 119 L. T. 321 : 34 T L. R. 427 44,203,204,278,503
Guildford Trust Co. v. Goss, (1926) 43. T. L. R. 167 : 136 L.T. 725 .. 220,248,257
Gulabchand v. Kamal Singh, 44 All. 424 : 67 I. C. 4 : (1922) All. 260 : 20 A. L. J. 285 ... 62
Gulabgir v. Nathmal, 27 N. L. R 327 : ... 58, 78, 80
Gulam Hussain v Clara D'Souza, 53 Bom. 819 : 31 Bom. L. R. 988 : (1929) Bom. 471 ... 65, 87
Gumm v. Taylor, (1864) 33 L. J. Q. B. 97, 111 ... 92
Gurasahu v. Tangi Krishnamma, 36 L. W. 432 .. 234
Gurney v. Womersly, (1854) 24 L. J. Q. B. 46 : 4 E. & B. 133 : 3 C. L. R. 3 : 1 Jur. (N. S.) 328 : 3 W R. 61 : 119 E. R. 51 : 99 R. R. 390 ... 225, 226
Gurudas v. Ishar Das, 3 Lah. L. J. 157 ... 596
——v. Khem Chand, 13 Lah. 31 : 33 P. L R 363 ; (1932) Lah. 274 : on appeal from (1930) Lah. 471 .. 53, 55
Gurudas Mal v. Guran Ditta ; 119 I. C. 485 ... 597
Gurumurti v. Sivayya, 21 Mad. 391 ... 59
Gwinnell v. Herbert, (1836) 111 E. R. 1231 : 5 A & E. 436 : 5 L.J.K.B. 250 : 6 N. & M. 723 : 2 H. & W. 194 : 44 R.R. 458 ... 243
Gyanee Ram v. Palee Ram, 2 N. W. P. 73 ... 19

H

Hadley v. Bambridge, (1842) 3 Q.B. 316 : 114 E. R 527 : 2 G. & E. 483 : 11 L. J. Q. B. 293 : 6 Jur. 853 ... 130
Hadwen v. Mendizabal, (1825) 2 C. & P. 20 : 10 Moor. 477 : 3 L. J. (O. S.) C. P. 198 ... 537
Hague v. French, (1802) 3 Bos. & P. 173 : 127 E. R. 95 ... 102
Hajarimal v. Kishna Raw, 5 Bom. 647 ... 189
Haji Noor Mohammed v. Macleod, 9 Bom. L R. 274 : 90 L. T. 803 : 20 T. L R. 398 ... 129

PAGE

Hajibasam v. Chunilal, 29 Bom. 360 ... 92
Hakim Rai v. Ganga Ram, 7 Lah. 206 ; (1926) Lah. 356 : 96 I.C. 445 533, 538, 595, 596
Halbot v. Lens, (1901) 1 Ch. 344 ; 70 L J. Ch. 125 : 83 L. T. 702 : 49 W. R. 214 ... 136
Halifax Union v. Weelright, (1878) L. R. 10 Ex. 183, 193 : 44 L J. Ex 121 : 32 L T. 802 : 23 W. R. 704 ... 25
Hall v. Fuller, (1826) 5 B. & C. 750 : 8 D. & R. 464 : 4 L. J. (O. S.) K. B. 297 .. 384
Halstead v. Skelton, (1843) 5 C. B. 86, 92, 94 : 13 L J. Ex. 177 : D. & M. 664 : 2 D. N. S. 96 : 7 Jur. 680 : 114 E. R. 1180 ... 295, 367
Hambro v. Burnand, (1904) 2 K. B. 210 : 73 L. J. K B. 669 : ... 122
Hamelen v. Bruck, (1846) 9 Q. B 306 ; 15 L. J. Q B 343 : 115 E. R. 1290 : 10 Jur. 1094 : 72 R. R 258 ... 375, 383
Hamilton v. Aston, (1845) 1 Cr. & K 679 ... 37
——v. Spottiswoode, (1849) 4 Ex. 200 ; 18 L. J. Ex 393 : 80 R. R. 519 : 154 E. R. 1182, ... 46
Hammond v. Dufrene, (1811) 3 Camp. 145 ... 317
Hanbury v. Levett, (1868) 18 L T. 366 : 16 W. R. 795 ... 98
Hanmantram v, Arthur Bowels, 8 Bom. 561 ... 567
Hannu Ram v. Jhanda Singh, (1929) Lah. 591 : 123 I. C. 90 ... 28
Hansard v. Robinson, (1827) 7 B & C. 93 : 5 L. J. (O. S) K.B. 242 : 108 E. R. 659 : 9 D. & R. 860 ; Ry. & M. 404 (note) 31 R. R. 166 212, 213, 288, 339, 340
Hansraj v. Lachmi, (1923) Lah. 388 ... 78, 461
Har Narain v. Behari Lal, (1932) Lah. 582 ... 337
Hardy v. Woodroffe, (1818) 2 Stark 319 : 20 R. R. 689 ... 310
Hare v. Henty, (1861) 30 L. J C. P. 302 : 10 C B N. S 65 : 7 Jur. (N. S.) 523 : 4 L T. 363 : 9 W. R 738 ; 142 E. R. 374 ... 433
Harek Chand v. Bishun, 8 C. W. N. 101 .. 186
Harendra v. Haridasi, 41 Cal. 972 : 41 I A. 110 : 18 C. W. N. 817 : 19 C. L. J. 484 : 16 Bom. L. R. 400 : (1914) M. W. N. 462 : 16 M. L. T. 6 ; 12 A. L. J. 774 : 27 M. L. J. 80 : 23 I C. 637 : 1 L. W. 1050 ... 198
Hari Lal, *In the matter of*, 33 Cal. 1269 : 10 C. W. N. 884 ... 335
Hari Mohun v. Sourendra Nath, 41 C.L.J. 535 : 88 I.C. 1025 ; (1925) Cal. 1153 142, 234, 236, 546
Harivulubhdas v, Harivalubhdas, 8 Bom. 194 (F.B. .. 29
Harji v. Abdul Halim, 60 I. C. 267 (Lah.) ... 110
Harjiban v. Bhagwan, 7 B.L R. (O.C.J.) 102 : on appeal *Ibid* 525 : 16 W. R. (O C.J.) 16 ... 89, 192, 193
Har Kishore v. Gura Mia, 58 Cal. 752 : 35 C. W. N. 53 : 53 C. L. J 37 : (1931) Cal. 387 : 131 I C. 570 ... 35, 60
Harmer v. Steele, (1849) 4 Ex. 1 : 19 L. J. Ex. 34 : 80 R R 450 : 154 E. R. 1100 ... 118, 274, 387
Harris v. Quire, (1869) L. R. 4 Q. B. 653 : 38 L.J Q B. 33 : 10 B. & C. 644 ; 20 L. T. 947 : 17 W. R 967 ... 507

PAGE

Harrison v. Cotgreave, (1848) 4 C. B. 562; 5 D. & L. 169: 16 L. J. C. P. 198: 136 E. R. 627 ... 113
——v. Dickson, (1811) 3 Camp. 52 (notes) ... 338
——v. Ruscoe, (1846) 15 M. & W. 231, 235: 15 L. J. Ex. 110: 153 E. R. 831: 10 Jur. 142: 71 R R 640 ... 393, 395, 406
——v. Walker, (1792) Peake 111 ... 116
Harrop v. Fisher, (1861) 10 C. B. N. S. 196: 30 L. J. C. P 283: 7 Jur. N. S. 1058: 9 W. R 667: 142 E. R. 426 ... 229
Harry Van Ingen v. Dhunna Lall Lallah, 5 Mad. 108 ... 270, 272
Hartley v. Case, (1825) 4 B. & C. 339: I. C. & P. 676: 3 L. J. (O. S.) K. B. 262: 6 D. & R. 505: 107 E. R. 1085 397, 401, 404, 405
——v. Wilkinson, (1814) 4 Camp. 127: 4 M. & S. 25: 105 E. R. 744. 31, 528
Harvey v. Martin, (1808) 1 Camp. 425 (notes) ... 56, 285
Hatch v. Searles, (1854) 2 Sm. & G. 147: 65 E. R. 342: 22 L. T. 280: 2 W. R. 242: affirmed on appeal 24 L. J. Ch. 22: 3 W. R. 49 ... 97, 98, 99
——v. Trayes, (1840) 11 A. & E 702: 3 P. & D. 408: 9 L J. Q. B 119: 113 E. R. 581 ... 39
Haussoullier v. Hartsinck, (1798) 7 T. R. 733; 4 R. R. 561: 101 E. R. 1225 ... 44
Hawkes v Salter, (1828) 4 Bing. 715: 6 L. J. (O. S.) C. P. 180: 1 M & P. 750: 29 R R. 708, 130 E. R. 944 403, 436, 437, 438
Hawkins v. Cardy, (1699) 1 Ld. Raym. 360: 91 E. R. 1137 ... 250, 251
——v. Rutt, (1793) 1 Peake. 248 ... 403
Hawtayne v. Bourne, (1841) 7 M. & W. 795, 799: 10 L. J. Ex. 224: 5 Jur. 118: 151 E. R. 905 ... 123
Hay v. Ayling, (1851) 16 Q. B. 423; 20 L, J. Q. B. 171: 12 Jur. 605: 117 E. R. 941 ... 539
——v. Goldsmid, (1804) 1 Taunt, 349: 2 Smith 79: 127 E. R. 868 referred to 9 R. R. at 790 ... 123
Haydock v. Lynch, (1730) 2 Ld. Raym. 1563: 92 E. R. 512 .. 43
Hayward, Re *Ex parte*, (1871) L. R. 6 Ch. App. 546: 40 L. J. Bk. 49: 24 L. T. 782: 19 W. R. 833 ... 45, 95, 96
Hazari Lal v. Sohan Lal, (1923) All. 407: 75 I. C. 609 ... 138
Hazari Mull Nahatta v. Sobagh Mull Dubbah, 9 B. L. R. 1 ... 272
Hazarimul v. Satish Chunder, 46 Cal. 331: 22 C. W. N. 1036: 48 I. C. 966 ... 12
Heath v. Sansom, (1831) 2 B. & Ad. 291 ... 257
Hedger v. Stevenson, (1837) 2 M. & W. 799: 5 Dowl. P. C. 771: 6 L. J Ex. 189: M. &. H. 178: 1 Jur. 987: 150 E. R. 980 ... 414
Heeney v. Addy, (1910) 2 Ir. R. 688 ... 92
Heilbut v. Nevill, (1869) L. R. 4 C. P. 354,358: 38 L. J. C. P. 273: 20 L. T. 400 ... 250, 251, 257
——v. Nevill, (1870) L. R. 5 C. P. 474, 478, 482: 39 L. J. C. P. 245: 22 L. T. 662; 18 W. R. 898 ... 240, 241

PAGE

Hemadri v. Seshamma, (1930) M. W. N. 1232 : (1931) Mad. 113 : 130 I. C. 477 ... 101, 176, 290, 303, 393
Hemp v. Garland, (1843) 4 Q. B 519 ... 566
Henderson, *In the goods of*, 22 Cal. 491 ... 25
——v. Arthur, (1907) 1 K. B. 10 : 76 L. J K B. 22 : 95 L. T 772 : 51 Sol. J. 65 ... 526
——v. Stobart, (1850) 5 Ex. 99 ; 19 L. J. Ex. 135 : 155 E. R. 43 ... 540
Henman v. Dickinson, (1828) 5 Bing. 183 : 2 M. & P. 289 : 7 L. J. (O. S) C. P. 68 : 30 R. R. 565 : 130 E. R. 1031 ... 379
Henry v. Lee, (1820) 2 Chitty, 124 ... 293
Herald v. Connah, (1876) 34 L. T N. S 885 ... 170
Herbert v. Sayer, (1844) 5 Q. B. 965 ; 13 L. J. Q. B. 209 : 2 D & L 49 : 8 Jur. 812 : 114 E R. 1512 ... 116
Herdman v. Wheeler, (1902) 1 K. B. 361, 369 : 71 L. J. K B. 270 : 86 L. T. 48 : 50 W. R. 300 : 18 T. L. R. 190 66, 82, 95, 96, 97, 99
Hetherington v. Kemp, (1815) 4 Camp. 194 : 16 R. R. 773 ... 403
Hewitt v Kaye, (1868) L. R. 6 Eq. 198 : 37 L. J. Ch. 633 : 16 W. R. 835 ... 162
——v. Thomson, (1836) 1 Moo. & Rob. 543 : 42 R. R. 822 ... 403, 413
Heylyn v. Adamson, (1758) 2 Burr. 669, 674, 676 : 2 Ken. 379 : 97 E. R. 503, 506 ... 181
Heywood v. Pickering, (18-4) L. R. 9 Q. B. 428 : 43 L J. Q B 145 ... 433
Hicking v. Hardley, (1817) 7 Taunt. 312 : 129 E. R. 125 : 1 Moore 61 ... 279
Hidayet Ali Beg v. Nga Kyaing, (1914) 24 U B. R. 13 : 24 I. C. 721 ... 15, 16, 17
Hill v. Halford, (1801) 2 Bos. & P. 413 ; 5 R. R. 632 : 126 E. R. 1357 ... 42, 43
——v. Heap, (1823) Dow & R. N. P. C. 57 : 25 R. R. 791 279, 287, 309, 412
——v. Heap, (1917) W. N 10 (C. A.) ... 527
——v. Lewis, (1699) 1 Salk. 132 : 91 E. R. 124 ... 177
——v. Wilson, (1873) 8 Ch. A C. 888, 894, 898 : 42 L. J. Ch. 817 : 29 L. T. 238 : 21 W. R. 757 ... 63, 524
Hilton v. Fairclough, (1811) 2 Camp. 633 : 12 R. R. 766 ... 437
——v. Shepherd, (1796) 6 East 19 n. ... 439
Hindustan Assurance & Mutual Benefit Society Ltd. v. Gurdit Singh, 6 Lah. L. J. 183 : (1924) Lah. 462 : 80 I. C. 741 ... 462, 466
Hine v. Allely, (1833) 4 B. & Ad. 624 : 2 L. J. K. B. 105 : 1 N. & M. 433 : 110 E. R. 591 : 38 R. R. 330 ... 298, 309, 438
Hira Lal v. Datadin, 4 All. 135 : (1881) A. W. N 144 ... 595
——v. Raj Kumar, 12 C. L. J. 470 : 8 I. C. 796 ... 40, 81, 464
Hirachand Punamchand v. Temple, (1911) 2 K. B. 330 ... 328, 540
Hirschfield v. Smith, (1866) L. R. 1 C. P. 340 : 35 L. J. C. P. 177 : 14 L. T. 886 : 1 H. & R. 284 : 12 Jur. (N. S.) 523 : 14 W. R. 455 231, 375, 424, 510

PAGE

Hirschmann v. Budd, (1873) L. R. 8 Ex. 171 : 42 L. J. Ex. 113 : 28 L. T. 602 : 21 W. R. 582 ... 337
Hitchcock v. Edwards, (1889) 60 L. T. 636 ... 70
——v. Humfrey, (1843) 5 M. & G. 559 ; 134 E. R. 683 : 12 L. J. C. P. 235 : 6 Scott N. R. 540 : 7 Jur. 423 : 62 R. R 401 322
Hitchings & Coulthurst Co. v. Northern Leather Co., (1914) 3 K. B. 907 : 83 L. J. K. B. 1819 : 111 L. T. 1078 : 30 T. L. R. 688 : 20 Com. Cas. 25 ... 525
Hoare v Cazenove, (1812) 16 East 391, 398 : 104 E. R. 1137 : 14 R. R. 370 ... 429, 445, 447
——v. Graham, (1811) 3 Camp. 56 : 13 R. R. 752 ... 367
Hobbs v. Cathie, (1890) 6 T. L. R. 292 ... 600
Hogarth v. Latham & Co., (1878) 3 Q. B. D. 643: 47 L. J. Q. B. 339 : 39 L. T. 75 : 26 W. R. 388 ... 69, 95, 96, 99
——v. Wherely, (1895) L. R. 10 C. P. 630 : 44 L. J. C. P. 390 : 32 L. T. 800 ... 124, 125
Hogg v. Skeen, (1865) 144 E R. 510 : 34 L. J. C. P. 153 : 18 C. B N. S. 426 : 11 Jur. (N S.) 244 : 11 L T. 709 : 13 W. R. 383 ... 266, 468
——v. Smith, (1808) 1 Taunt. 347 ... 124
Holdsworth v. Hunter, (1830) 10 B & C. 449, 454, 455 : 8 L. J. (O. S.) K. B. 149 : 5 Man. & R. 393 : 34 R. R. 479 : 109 E. R. 517 ... 48, 56, 497, 498
Holliday v. Atkinson, (1826) 5 B. &. C. 501 : 8 D. & R. 168 : 29 R. R 299 : 108 E. R. 187 ... 65, 111, 112, 201
Hollier v. Eyre, (1842) 9 Cl. & F. 1 ... 186
Holmes v. Jaques, (1866) L. R. 1 Q. B 376 : 35 L. J. Q. B. 130 : 12 Jur. (N. S.) 486 : 14 L. T. 252 : 14 W. R. 584 : 30 J. P. 693 ... 36
——v. Kerrison, (1810) 2 Taunt. 323 : 11 R. R. 594 : 127 E. R. 1102 ... 100, 284
——v. Kidd (1858) 28 L. J. Ex 112 : 3 H & N. 891 : 5 Jur. (N. S.) 295 : 7 W. R. 108 : 157 E. R. 729 ... 266, 268, 269, 272
Holt v. Markham, (1923) 1 K. B. 504 : 92 L. J. K. B. 406 : 128 L. T. 719 ... 332
Hong-Kong & Shanghai Banking Corporation v. Lo Lee Shi, (1928) A C. 181 : 97 L. J. P. C. 35 ; 138 L. T. 529 : 44 T. L. R. 233. ... 371, 377, 381
Hopes v. Alder, (1886) 6 East 16 (notes) : 102 E. R. 1190 ... 314, 395, 415
Hopkins v Abbot, (1875) L. R. 19 Eq., 222 : 44 L. J. Ch. 316 : 31 L. T. 820 : 23 W. R. 227 ... 29
——v. Ware, (1869) L. R. 4 Ex. 268, 272 : 38 L. J. Ex. 147 : 20 L. T. 668 ... 301, 431, 538
Hopkinson v. Forster, (1874) L. R. 19 Eq. 74, 76 :, 23 W. R. 301 ... 50, 159, 164
Hopley v. Dufresne, (1812) 15 East 275 ... 313
Horford v. Wilson, (1807) 1 Taunt. 12 : 127 E. R 733 ... 415
Hornby v. McLaren, (1908) 24 T. L. R. 494 ... 266, 269
Horne v. Redfearn, (1838) 4 Bing. N. C 433 : 7 L. J. C. P. 214 : 6 Scott. 260 : 2 Jur. 376 : 132 E. R. 854 ... 29

PAGE

——v. Rouquette, (1878) 3 Q B D. 514, 517, 518 : 39 L. T. 219 : 26 W. R. 894 ... 182, 392, 424, 487
House Property Co. v. London County Westminster Bank, (1915) W. N. 247 : 84 L. J. K. B. 1846: 113 L. T. 817 : 31 T. L. R. 479. ... 248, 487, 491
Housego v. Cowne, (1837) 2 M. & W. 343 : M. & H. 54 : 6 L. J. Ex. 110 : 150 E. R. 790 ... 399, 400
Howard v. Chapman, (1831) 4 C & P. 508 ... 73
Howatson v. Webb. (1908) 1 Ch. 1 : 77 L. J. Ch. 32 : 97 L. T. 730 ... 256
Howe v. Bowes, (1812) 16 East. 112 : 5 Taunt. 30 : 14 R. R. 700 : 104 E. R. 1031 ... 309
Howgate v. Osborn's Contracts, *In re*, (1902) 1 Ch. 451 : 71 L. J. Ch. 279 : 86 L. T. 180 ... 380
Huber v. Steiner, (1835) 2 Bing. N. C. 202 : 2 Scott. 394 : 4 L. J. C. P. 233 : 1 Hodges 206 : 2 D P. C. 781 : 42 R. R. 598 : 132 E R. 80 ... 507
Hudson v. Royal Bank of Australia, (1857) 29 L. T. O. S. 92 ... 268
Hunooman Persaud Panday v. Musammat Babooee Munraj Koonwaree, 6 M. I. A. 393 : 19 E. R. 147 ... 142
Hunsraj Purmanand v. Ruttonji Walji, 24 Bom. 55, 68, 71 : 1 Bom. L. R. 734 ... 40, 71, 81, 262, 263, 264
Huree Mohun Bysack, v Krishno Mohun Bysack, 17 W. R. 442 : 9 B L. R. App 1 ... 20, 188, 198, 398, 438
Hurry Mohun Rai v. Ganesh Chunder Das, 10 Cal. 823 ... 547
Husseinali v. Dinbai, 25 Bom. L. R. 252 : 86 I. C. 240 : (1924) Bom. 135 ... 258
Hutcheon v. Mannington, (1802) 6 Ves. Jur. 823 : 2 R. R. 115 : 31 E. R. 1327 ... 25, 428
Huteoman Saib, v. Husain Sahib, 1 M. H. C R. 152 ... 34
Hutley v. Marshall. (1873) 46 L. T. 186 (C. A.) ... 92
——v. Peacock, (1913) 30 T. L R. 42 ... 111
Hutton v Eyre, (1815) 6 Taunt. 289 : 1 March 603 : 16 R. R. 619 : 128 E. R. 1046 ... 347
Hyne v. Dewdney, (1852) 21 L. J. Q. B. 278 : 19 L. T. O. S. 61 ... 29

I

Ibrahim Fazil Boy v. The International Banking Corporation, 27 Bom. L. R. 283 : (1925) Bom. 252 : 87 I. C. 485 ... 55, 171
Ichha v. Natha, 13 Bom 338 ... 25
Imperial Bank, *Re*, 56 Cal. 233 ... 574
Imperial Bank of Canada v. Bank of Hamilton, (1903) A. C. 49, 55 : 72 L. J. P. C 1 : 87 L. T. 457 : 51 W. R. 289. ... 52, 160, 331, 360, 363, 375
Imperial Bank of India v. Avanasi, 59 M. L. J. 513 : 53 Mad. 826 ; 32 L. W. 745 : 128 I. C. 518 : (1931) Mad. 874. ... 533
—— v. Bengal National Bank, 59 Cal. 577 (P. C.) ; 35 C. W. N. 1034 : (1931) M. W. N. 910 ; 54 C. L. J. 117 :

PAGE

33 Bom. L. R. 1338 : 34 L. W. 569 : 61 M. L. J. 589 : 134 I. C. 656 : (1931) P. C. 245 ... 82, 87
——of Persia v. Fatte Chand Khub Chand, 21 Bom. 294 ... 20
——Land Co. of Marseilles, *In re*, (1870) L. R. 11 Eq. 478 : 40 L. J. Ch. 93 : 23 L. T. 515 : 19 W. R. 223 ... 29, 80, 117
——Loan Co., Ltd. v Stone, (1892) 1 Q. B. 559 : (C. A.) 61 L. J. Q. B. 449 : 66 L. T. 556 ... 113
Importers Company Ltd. v. Westminster Bank, (1927) 1 K. B. 869: (1927) 2 K. B. 297 : (1927) W. N. 179 : 43 T. L. R. 639 : 96 L. J. (K. B.) 919 : 32 Com. Cas. 369 : 137 L. T. 693 476, 489, 491, 494, 495
Ind. Companies Act, 1866 and of the Port Canning Land Investment Reclamation and Dock Co. Ltd , *In the matter of*, (1871) 7 B. L. R. (O. C. J.) 583 ... 119
Indian Specie Bank v. Nagindoss, 18 Bom. L. R. 689 ... 183, 556
Indur Chandra Dughar v. Lachmi Bibi, 7 B. L. R. 682 : 15 W. R. 501 20, 21, 24, 213
Indur Pattabirama v. Kami Setti, 55 M. L. J. 574 : (1928) M. W. N. 698 : (1928) Mad. 1196 ... 133
Ingham v. Primrose, (1859) 7 C. B. N. S. 82 : 28 L. J. C. P. 274 : 5 Jur. (N. S.) 710 : 141 E. R. 745 69, 254, 344, 345
Innes v. Munro, (1847) 1 Exch. 473 : 17 L. J. Ex. 71 : 154 E. R. 201. 530
International Banking Corporation v. H. Pestonjee & Co., 49 Bom. 351 : 27 Bom. L. R. 31 : 86 I. C. 115 (2) : (1925) Bom. 187 ... 587
Ireland v. Livingston, (1872) L. R. 5 H. L. 395 : 41 L J. Q. B. 201 : 27 L. T. 79 ... 356
Isac Mahomed v. Bai Fatima, 10 Bom 487 ... 380
Ismail Hoosain v. Purbhubai, 6 Rang. 415 : 112 I. C. 254 : (1928) Rang 242 ... 333
Ismalji Yusuf Alli v. Raghunath Lachiram, 36 Bom 636 : 11 Bom. L. R. 748 : 3 I. C. 779 ... 16

J

Jacaud v. French, (1810) 12 East. 317 : 11 R. R. 390 : 104 E. R. 124 327
Jackson v. Hudson, (1810) 2 Camp. 447 : 11 R. R. 762 46, 55, 169, 170, 442
——v. Slipper, (1869) 19 L. T. 640 ... 27, 177
Jacob & Co. v. Vicumsey, 29 Bom. L. R. 432 ; 102 I. C. 138 : (1927) Bom. 437 ... 596, 597
Jacobs, *Re*, (1875) L. R. 10 Ch App 211 : 44 L. J. Bk. 34 : 31 L. T. 745 : 23 W. R. 251 ... 190, 191
——v. Credit Lyonnais, (1884) 12 Q. B. D 589: 53 L. J. Q. B. 156 : 50 L. T. 194 : 32 W. R. 761 ... 511
——v. Morris, (1901) 1 Ch. 261 : (1902) 1 Ch 816 : 46 Sol. Jo. 315 : 71 L J. Ch. 363 : 86 L. T. 275 : 50 W. R. 371 : 18 T. L. R 384 122, 123
Jadab Chandra Bakshi v. Bhairab Chandra Chuckerbuty, 31 Cal. 297 566
Jadowji Gopal v. Jetha Shanji, 4 Bom. 333, 344 ... 23

PAGE

Jagadindra v. Chandra, 31 Cal. 242 ... 62
Jagan Nath v. Heap & Co., 71 P. R. 1909 : 110 P. W. R. 1909 : 2 I. C. 804 : 107 P. L. R. 1909 ... 46, 55, 383
——Nathu Mal v. Ram Das Brij Das, 243 P. L. R. 1914 : 140 P. W. R. 1914 : 25 I. C. 881 : 107 P. L. R. 1909 ... 391, 406, 439
Jagan Prasad v. Indar Mal, 36 All 259 : 12 A. L. J. 361 : 23 I. C. 549 ... 596
Jaganath v. Dewan Chand, (1931) Lah. 758 ... 291, 298
Jaganath Rahatgir v. Deokinandan, 29 I. C. 671 ... 594
Jagannadha Reddiar v. Lakshmanan, 47 M. L. J. 475 : (1925) Mad. 132 172. 175, 176, 396, 406, 434. 564
Jagdip v. Firangi, (1928) Pat. 155 ... 597. 598
Jagjivandas v. Nagar Central Bank, 50 Bom. 118 : 28 Bom. L. R. 226 : 93 I. C. 619 218, 356, 363, 364
Jagmohan v. Mendhai, (1932) All. 164 ... 461
——v. Sampatlal, 27 N. L. R. 324 ... 138, 144
Jagmohandas v. Allu Maria, 19 Bom. 338 ... 543
Jagan Ram Marwari v. Mahadeo Prasad Sahu, 36 Cal. 768 : 13 C. W. N. 643 : 1 I. C. 724 ... 116
Jai Narain v. Mahbub Bakhsh, 28 All. 428 : 3 A L.J. 203 : (1906) A. W. N. 77 ... 71, 262, 263
Jaichand v. Sandar Singh, 44 I.C. 264 : 150 P. L. R 1917 : 5 P. W. R. 1918 ... 251
Jaikumar v. Gaurinath, 28 All. 718 : 3 A. L J. 506 : (1906) A. W. N. 212 ... 63, 260
Jajodia Cotton Mills Ltd., *In re*, (1927) Cal. 612 : 31 C. W. N. 683... 139
Jalanchand v. Assaram, 22 C. L. J. 22 ... 21, 89
Jambagathachi v. Rajamannarsami, 11 L. W. 596 ... 109
Jambhekar v. Subkaran, 20 Bom. 133 ... 11
Jambu Chetty v. Palaniappa Chettiar, 26 Mad. 526, 528, 530 : 13 M. L. J. 252 24, 391, 406, 416, 533, 534, 536, 537
Jambu Ramaswami Bhagavathar v. Sundararaja Chetty, 26 Mad. 239, 241 : 12 M. L. J. 267 151, 152. 184, 414, 416, 569
James v. Williams, (1845) 18 M. & W. 828 : 3 N & M. 196 : 5 B. & Ad. 1109 : 2 D. P. C. 481 : 3 L. J. K. B. 97 : 110 E. R. 1103 ... 536
Jameson v. Swinton, (1809) 2 Camp. 373 : (1810) 2 Taunt 224 ... 393
——& Co. v. Brick & Stone Co., (1878) 4 Q. B. D. 208 ... 116
——v. Scott, 36 Cal. 291 : 1 I.C. 972 60, 179, 180, 327, 328, 541
Jamna Bai v. Vasanta Rao, 39 Mad. 409 : 31 M. L. J. 18 : 14 A. L. J. 534 : 20 C. W. N. 840 : 24 C.L.J. 74 : 18 Bom. L.R. 433 : 20 M. L. T. 31 : (1916) 1 M. W. N. 452 : 3 L. W. 540 : 34 I. C. 213 : 43 I. A. 99 (P.C.) ... 111, 329
Jamnamanjoy Condoo v. Watson, (1884) 9 A.C. 561 ... 124
Jankidas v. Kishan Pershad, 46 Cal. 663 (P.C.) : 36 M. L. J. 429 : 21 Bom. L. R. 605 : 29 C. L. J. 340 : 17 A.L J. 405 : 10 L.W. 143 : 50 I. C. 219 : 25 M. L. T. 258 : 23 C. W. N. 937 :

PAGE

(1919) M. W. N. 310 : 1 U. P. L. R. (P. C.) 37: 12 Bur. L. T. 160 :
(1918) P. C. 146 : 46 I. A. 33 : 25 M. L. J. 258 ... 126, 132, 140, 144
Jarvis v. Wilkins, (1841) 7 M. & W. 410 : 10 L. J. Ex 104 :
5 Jur. 9 : 151 E. R. 825 ... 31
Jaswant v. Gobind, 140 I.C. 13 ... 326
Jawahar Lal v. Manna Lal, (1930) Oudh 108 ... 463
Jawala v. Mt. Rajkuar, (1930) Lah. 812 : 127 I C. 714 :
31 P.L.R. 329 ... 191
Jeaunissa v. Manikji, 7 Bom. H. C. R. (O C. J.) 36 ... 569
Jeetun Lall v. Sheochurn, 2 W. R. 214 ... 398
Jeffries v. Austen, (1725) 1 Stra. 974 : 93 E R. 774 ... 221
Jenkins v. Coomber, (1898) 2 Q.B. 168 : 67 L. J. Q. B. 780 :
78 L. T. 752 : 47 W. R. 48 ... 69, 243
——v. Hutchinson, (1849) 18 L. J. Q. B. 274, 276 : 13 Q. B. 744 :
13 Jur. 763 : 116 E. R. 1448 ... 144
——v. Jenkins, (1928) 2 K.B. 501 : 97 L J.K B. 400 : 139 L T. 119 :
44 T.L.R. 113 ... 348
Jenney v. Herle, (1823) 2 Ld. Raym. 1361 : 8 Mod. 266 :
1 Stra. 591 : 93 E. R. 719 ... 43
Jennings v. Roberts, (1855) 24 L. J. Q. B. 102 : 4 E. & B. 615 :
1 Jur. N. S. 401 : 99 E. R. 653 : 119 E. R. 225 ... 394
Jetha Devji & Co. v. Firm of Sri Ram Moolchand, 98 I. C. 78 ... 555, 561
Jetha Parkha v. Ramachandra Vithoba, 16 Bom. 689, 696 15, 16, 40, 78, 248
Jethibai v. Ramchandra, 13 Bom 484 ... 577
Jethmal v B. B. & C. I. Ry. Co, 3 Bom. L R. 260 ... 13
Jeune v. Ward, (1818) 1 B. & Ald. 653, 659 : 2 Stark. 326 :
106 E. R 240 ... 285, 349
Jhanda Ram v. Toda Mal, 173 P.L.R. 1911 : 96 P. W. R. 1911 :
10 I.C. 405 ... 316, 412, 416
Jhandu Lall v. Wilayatti Begam, 47 All. 572 :
23 A.L.J.R. 349 286, 290, 294, 311, 314, 319
Jhandu Mal & Sons v. Dehra Dun etc, Tramway Coy., 52 All. 883:
(1930) A. L. J. 1052 : 128 I. C. 758: (1930) All. 778 ... 139
Joachimson v. Swiss Bank Corporation, (1921) 3 K.B. 110 :
90 L.J.K B. 973 : 125 L. T. 338 : 37 T.L R. 534 ... 154. 156, 356
Jogeshchandra v. Mahammad, 57 Cal. 695 : 129 I. C 305:
(1930) Cal. 697 46, 53, 54. 55, 89, 121, 133, 138, 166, 170, 202
John v. Dodwell & Co., (1918) A.C. 563 : 87 L.J P.C. 92 :
118 L.T. 661 : 34 T. L. R. 261 ... 158
Johnson v. Duke of Marlborough, (1818) 2 Stark 313 ... 379
——v. Kennion, (1765) 2 Wils. 262 : 95 E. R. 800 ... 64, 329
——v. Medlicot, (1734) 3 P. Wms 130 (n) ... 114
——v. Robarts, (1875) 10 Ch. App. 505 : 44 L. J. Ch. 678 :
38 L.T. 138 : 23 W. R. 763 ... 157
——v. Thomas, (1784) 3 Dougl. K. B. 421 ... 100
Johnstone v. Pedlar, (1921) 2 A. C. 262 ... 115

PAGE

Jones v. Broadhurst, (1850) 9 C. B. 173 : 82 R. R 336 : 137 E. R. 858 ... 288, 328, 329, 331, 387
——v. Darch, (1817) 4 Price 300 : 146 E. R. 471 ... 473
——v. Gordon, (1877) L. R. 2 A. C. 616, 629, 631: 47 L.J. Bcy. 1: 37 L.T. 477 : 26 W.R. 172 ... 65, 67, 258, 261, 466, 467
——v. Jackson, (1870) 22 L. T. N. S. 828 ... 139
——v. Permanent Merionethshire Benefit Building Society, (1892) 1 Ch. 173 : 61 L. J. Ch. 138 : 65 L. T. 685 : 40 W.R. 273: 8 T.L.R. 133: 36 Sol. Jo. 108 ; 17 Cox C.C. 389 : affirming (1891) 2 Ch. 587 ... 259
——v. Ryde, (1814) 5 Taunt. 488: 1 Marsh. 157 : 15 R. R. 561: 128 E. R. 779 ... 225
——v. Simpson, (1823) 2 B. & C. 318 : 2 L. J. (O. S.) K B 22 : 3 D. & R. 545 : 26 R.R. 371 : 107 E. R. 402 ... 46
——v. Turnour, (1830) 8 L. J. (O.S.) K.B 173 : 4 C. & P. 204 ... 198
——v. Warrings & Gillow Ltd., (1926) A. C. 670 ... 66, 331, 322, 386, 452
Joseph v. Solano, 9 B.L R. 441 : 18 W. R. 424 ... 259. 260, 398, 557
Joshi V. R. v. G. K. Sathe. 45 Bom. 1155 ... 523
Josoliyne v. Robarts, (1908) 2 K.B. 349: 77 L. J. K B. 845: 99 L.T. 282 ... 298
Jotiprasad v. Brij Raj, (1923) Lah. 29 ... 34
Joy Kisto Cower v. Nithyanand, 3 Cal. 738 : 2 C. L R. 440 ... 131
Joyman Bewa v. Easin Sarkar, 30 C. W N. 609 ... 598
Jowitt & Sons v. Union Cold Storage Coy., (1913) 3 K.B. 1 : 82 L.J.K.B. 890 : 108 L. T. 724 : 29 T. L R. 477 ... 195
Judhister Patrao v. Nobinchandra Khela, 13 Cal. 73 ... 567
Juggomohun Ghose v. Manikchund, 7 M. I A. 282 : 4 W. R. 8 (P.C.): 19 E. R. 308 ... 13, 19
Julian v. Shobrooke, (1753) 2 Wils. 9: 95 E. R 658 ... 366
Jumna Dass v. Eckford, 9 Cal. 1 ... 122
——v. Mehur Singh, 1 Agra 182 ... 174
Jury v. Barker, (1858) E. B. & E. 459: 27 L. J. Q B. 255 : 4 Jur (N. S.) 587: 6 W. R. 660 : 113 R. R. 731 : 120 E. R. 580 ... 27, 31, 44

K

K. M. P. R. Firm v. Official Assignee, (1923) Mad. 17 : 43 M. L. J. 142 : (1922) M.W N. 498 : 16 L. W. 75 : 70 I. C. 751 ... 330, 331
Kadappa Chetti v. Thiruppati Chetti, 21 L. W. 210 : 86 I. C. 576 ... 175, 396
Kader Nath v. Gerrad, 1 Bur. L. J. 244: 77 I.C. 761 ... 372
Kadiresan v. Ramanathan, (1927) M. W. N. 113 ... 573
Kali Prasad v. Narayan, (1927) Pat. 417 : 103 I. C. 488 ... 387
Kali Prasanna v. Ambica Churn, 9 B.L.R. 261: 18 W.R. 416 ... 190
Kaliyappa v. Grigori, 10 L. W. 64 ... 567
Kalyanasundaram v. Ramasami, 31 I.C 317 ... 546

PAGE

Kamal Khan v. Nismuddin, 20 A.L.J. 917: 11 I.C. 412 ... 376
Kameswara v. Veeracharlu, 34 Mad. 422: 20 M.L J. 855: 9 M.L.T. 26: (1910) M. W. N. 649: 8 I.C. 195 ... 547
Kamini Debia v. Radha Sham Koondoo, 18 W.R. 58 ... 214
Kamola Ram v. Kaura Khan, 41 P. R. 1912 ... 113
Kanai Prasad v. Jatindra, 36 Cal. 626 ... 184
Kandhiya v. Chandar, 7 All. 313 (F.B.) ... 59
Kanhailal v. Babu, 8 A.L.J. 1058 ... 110
Kanhaiya v. Azimul Lal, 25 O. C. 69: (1922) Oudh 122 ... 336
Kanhaiya Lal v. Domingo, 1 All. 732 ... 40
——v. Stowell, 3 All. 581 (F.B.): (1881) A. W. N. 49 ... 30
Kankuchand v. Rustomji Hormusji, 20 Bom. 109 ... 566
Kannayalal Bhoya v. Balaram, 43 M. L. J. 480: 16 L. W. 608: 31 M.L.T. 283: (1923) Mad. 44 ... 27, 554
Kannusawmi Pillai, *In re*, 8 M. L. T. 463: 9 I.C. 79 ... 61, 461, 464
Kanyalal v. Balaram, 16 L.W. 608, 611 ... 48
Karim v. People's Bank of India, 9 S. L. R. 32: 30 I. C. 35 ... 148, 153
Karindan Kuttiassan v. Kariadan Suppi, 3 M L. J. 199 ... 569
Karmali Abdulla v. Karimji, 39 Bom. 261: 17 Bom. L. R. 103: 19 C. W. N. 337: 21 C. L. J. 122: 13 A. L. J. 121: (1914) P. C. 132: 28 M. L. J, 515: 17 M. L. T. 35: 2 L. W. 133: (1915) M. W. N. 606: 26 I. C. 915: 42 I. A. 48 ... 235, 544
Karmchand v. Basant Kuar, 31 P. R. 1911 ... 111
Karunakaran Nair v. Krishna Menon, 36 Mad. 66: 10 M. L. T. 258: 12 I. C. 57 ... 566, 567
Karuthappa v. Bava Moideen Sahib, 36 Mad. 370: (1911) 2 M. W. N. 380: 10 M. L. T. 531 ... 27, 28
Kashab Panda v. Bhobani Panda, 18 C. L. J 187 ... 10
Kashi Prasad v. Panna Lal, (1923) All. 529 ... 595
Kashiba Bin Narasappa Nikade v. Shripat Narshiv, 19 Bom. 697. 109, 111, 502
Kasivasi Somasundara Thambiran v. Venkatanarayana Pillai, 26 I. C. 356. (Mad.) ... 140
Katasi v. Daulat Ram, 1 Lah. L. J. 158: 56 I. C. 936 ... 431
Katchi Rowther v Naina Mahomed, 28 I. C. 300 ... 577
Kattick Ramunni v. Udayamangalath Mithale, 14 I. C. 279: (1912) M. W N. 524 ... 219
Kearney v. King, (1819) 2 B. & Ald. 301: 106 E. R. 377 ... 35
——v. West Granada Gold & Silver Mining Company, (1856) 1 H. & N. 412: 26 L J. Ex. 15: 5 W. R. 200: 108 R. R. 652: 156 E. R. 1262 ... 498
Kearns v. Durell, (1848) 18 L. J. C. P. 28: 6 C. B. 596: 6 D. & L. 357: 13 Jur. 153: 77 R. R. 400: 136 E. R. 1382 ... 201, 523
Kearsley v. Cole, (1846) 16 M. & W. 128: 16 L. J. Ex. 115: 153 E. R. 1128 ... 190
Keene v. Beard, (1860) 8 C. B. N. S. 372, 381: 29 L. J C. P 287: 6 Jur. (N. S.) 1248: 2 L. T. 240: 8 W. R. 469: 141 E. R. 1210... 50
Keighly v. Durand, (1901) A. C. 240 ... 135

PAGE

Keith v. Burke, (1885) 1 Cab. & E. 551 ... 312, 315
Kelly v. Solari, (1841) 9 M. & W. 54: 11 L. J. Ex. 10 ... 330
Kelner v. Baxter (1886) L. R. 2 C. P. 174: 56 L. J. C. P. 94: 12 Jur. (N. S.) 1016: 15 L. T. 313: 15 W. R. 278 ... 135, 144
Kemp v. Balls. (1854) 10 Ex. 607: 24 L. J. Ex. 47: 3 C. L. R. 195: 156 E. R. 581 ... 328
Kendrick v. Lomax, (1832) 1 Cr. & J. 405; 1 L. J. Ex. 145 ...
Kennedy v. Panama Mail Co., (1867) L. R. 2 Q. B 580; 36 L. J. Q. B. 260: 17 L. T 62 ... 226
——v. Thomas, (1894) 2 Q. B. 759: 63 L. J. Q. B. 761: 71 L. T. 444: 42 W. R. 641: 10 T. L. R. 572: 38 Sol. Jo. 616 103, 269, 396, 438
Kent v. Lowen, (1808) 1 Camp. (N. P.) 177 ... 206
Keptigalla Rubber Estates Ld. v. National Bank of India, (1909) 2 K. B. 1010: 78 L. J. K. B. 964: 100 L. T. 516: 16 Manson 234: 14 Com. Cas. 116: 53 Sol. J. 377 264, 265, 359, 360, 362
Kershaw v. Cox, (1800) 3 Esp. 246 ... 380, 586
Kesari Chand v. Merwanjee, 1 Bom. L. R. 263 ... 261
Kesavalu v. The Corporation of Madras, 50 M. L. J. 301: 22 L. W. 203 ... 10
Kesavaramayya v. Visamsetti, 50 M. L. J. 36: 23 L. W. 678: 92 I. C 626: (1926) M. W. N. 141: (1926) Mad. 452 ... 17
Kesharichand v. Asharam, 22 C. L. J. 209: 19 C. W. N. 1326: 33 I. C. 250 ... 21
Kessowji v. Hurjivan, 11 Bom. 566 ... 259
Kettle v. Dunster v., (1927) 43 T. L. R. 770: 138 L. T. 158 ... 139
Khan Chand v. Golab Ram, 39 P. R. 1911: 142 P. L. R. 1911: 10 I. C. 133 ... 350
Khurshid v. Ram Ditta, (1928) Lah. 665: 107 I. C. 753 ... 336, 337
Kidson v. Dilworth, (1818) 5 Price 564: 19 R. R. 656: 146 E. R. 695. 526
Killby v. Rochussen, (1865) 18 C B. N. S. 357: 144 E. R. 483 ... 415
Kidson & Co. v. Seth Brothers, 57 Cal 730: 129 I. C. 190: (1930) Cal. 692 ... 75
Kilsby v. Williams, (1822) 5 B. & Ald. 815: 1 D. & R. 476: 24 R. R 564: 106 E R 1388 ... 159
Kimbro v Bullit, (1859) 20 Howard 256 (Amer.) ... 130
King v. Smith, (1829) 4 C. & P. 108 ... 241
——v. Thorn (1789) 1 T. R. 487: 99 E. R. 1212 ... 145
——v. Zimmerman, (1871) L. R. 6 C P. 466: 40 L J. C. P. 278: 24 L. T. 623: 19 W. R. 1009 ... 213, 340
King and Boyd v. Porter, (1925) N. Ir. R. (C. A.) 107 ... 301, 352
Kingston, *Ex-parte*, (1871) L. R. 6 Ch. 632: 43 L. J. Bk. 91: 25 L. T. 250: 19 W. R. 919 ... 157
Kinlan v. Ulster Bank, (1928) 1 Ir. R. 171 ... 459
Kirk v. Blurton, (1841) 9 M. & W. 284: 12 L. J. Ex. 17: 60 R. R. 729: 152 E. R. 120 ... 132

PAGE

Kirkwood v. Carroll, (1903) 1 K. B. 531 : 72 L. J. K. B. 208 : 88 L. T. 52 : 51 W. R. 374 : 19 T. L. R. 253 : 47 Sol. Jo. 316 ... 31, 153
Kirmany v. Aga Ali, (1928) Mad. 919 ... 464, 465
Kishan Bahadur v Sassaram Ltd., 2 Pat. L. R. 54 ... 466
Kishari Prasad v. Har Narain, 33 All. 272 : 38 I. A. 45 : 21 M. L. J. 378 : 9 I. C. 739 : (1911) 2 M. W. N. 395 : 15 C W. N. 321 : 8 A. L. J. 256 : 13 Bom. L R 359 : 13 C. L. J. 345 ... 131
Kishen Ballab v. Ghure Mal, 13 A. L. J. 322 : 28 I C. 390 ... 461
Kishenchand v. Jamna Das, 24 P. L. R. 1910 : 25 P. W. R. 1910 : 5 I. C. 891 ... 462
Kishen Sarup v. Tarachand, 29 I. C. 889 ... 533
Kishin Das v. Sobhasing, 121 I. C. 873 ... 604
Kishore Chand v. Gurditta, 165 P. L. R. 1911 : 10 I. C. 315 ... 21
Kishore Lal v. Ram Lal, 3 Lah. L J. 170 ... 584
Kisondas v. Dhondu, 44 Bom. 542 ; 22 Bom. L. R. 762 : 57 I .C. 472. 258
Knight v. Clements, (1838) 8 A. & E. 215 : 3 Nev. & P. 375 : 7 L. J. Q. B. 144 : 1 W. W. & H. 280 : 2 Jur. 395 : 47 R. R. 563 : 112 E. R. 819 ... 379
——v. Crockford, (1794) 1 Esp. N. P. Cas. 190 : 5 R. R. 729 ... 32
Knill v. Williams, (1809) 10 East. 431, 432 : 10 R R. 349 : 103 E. R. 839 ... 377, 586
Ko Pe Twe v. Venkatachelam Chetty, U. B. R. (1892-96) 593 ... 381
Koch v. Dicks, (1931) 74 L. J. K. B. 108, affirmed on appeal, (1932) W. N 156 ... 373
Kodali Mallayya v. Tangopala Ramayya, 21 M. L. J. 462 : 8 M. L. T. 251 : 7 I. C. 320 535, 595, 596, 597
Kodumal Kalumal v. The Karachi Bank Ltd., 15 S. L. R. 93 ... 263
Koechlin Et. Cie. v. Kestenbaum Brothers, (1927) 1 K. B. 889 : (1927) W. N 102 : 43 T. L. R. 352 : 96 L. J. (K. B.) 635 : 137 L. T. 216 : 32 Com. cas 267 ... 505
Kolai Sai v. Balai Hajam, 3 Rang. 39 : 88 I. C. 833, (1925) Rang. 209. 584
Koneti Naicker v. J. Gopala Aiyar, 38 Mad. 482 : 25 M. L. J 425 : 14 M. L. T, 414 : 21 I. C. 417 : (F. B.) on appeal from 23 M. L. J. 417 : 12 M. L. T. 367 : (1912) M. W. N. 984 139, 140, 143, 545
Kong Ye Lone & Co. v. Lowjee Nanjee, 29 Cal. 461 (P. C.) : 28 I. A. 239 : 5 C. W. N. 714 : 3 Bom. L. R. 476 ... 261
Koob Lal v Jungle Singh, 3 Cal. 787 : 11 W. R. 520 : 16 W. R. 6 ... 16, 598
Kooverbhan v. Madandas, 49 I. C. 193 ... 556
Kothandarama v. Arunachala, 32 I. C. 997 (Mad.) ... 545
——v. Thesu, 27 M. L. J. 416 : 1 L. W. 928 ... 259
Kothandaramaswami v. Muthia Chetti, 45 I. C. 186 (Mad.) ... 86, 465
Koti Venkataramiah v. Official Assignee of Madras, 33 Mad. 196 : 8 M. L. T. 316 : 5 I. C. 202 ... 66, 217, 340
Kottieth Ramunni v. Udayamangalath Mithale, (1912) M. W. N. 524 : 14 I. C. 279 ... 219
Koylash Chunder v. Sonatum Chung, 7 Cal. 132 : 8 C. L. R 281 ... 237

PAGE

Kredit Bank Cassel v. Schenkers Ltd., (1926) 2 K. B. 450 : (1927) 1 K. B. 826 : (1927) W. N. 39 : 71 Sol. Jo. 141 : 43 T. L. R. 237 : 96 L. J. (K. B.) 501 : 136 L. T. 716 : 32 Com. Cas. 197 : 52 M. L. J. (M.) ... 117, 248, 265
Krishna v. Nagamani, 39 Mad. 915 ... 547
——Ayyar v. Krishnaswami Ayyar, 23 Mad. 597 (F. B.) 234, 235, 542, 545
——Chandra v. Sanat Kumar, 40 Cal. 162 ... 347
——Chettiar v. Nagamani Ammal, 39 Mad. 915 : 18 M. L. T. 216 : 30 I. C. 574 ... 132, 142, 547
——Kisor v. Nagendrabala, 25 C. W. N. 942 : 34 C. L. J. 333 : 66 I. C. 694 ... 371
Krishnaji Narayan v. Rajmal Manik Chand, 24 Bom. 360 : 2 Bom. L. R. 25 397, 416, 596, 597
Krishna Shet Bin Ganshet Shety v. Hari Valji Bhatye, 20 Bom. 488 23, 396, 397, 546
Krishnan v. Raman, 39 Mad. 918 ... 122
Krishnand Kahre v. Rajo Ram Singh, 44 All. 393 : 20 A. L. J. 233 : 66 I. C. 150 : A. I. R , 1922 All 116 ... 546
Krishnappa Chetty v. Adimula Mudali, 20 Mad. 84 ... 258
Krishnaswami v. Rangasami, 7 Mad. 112 ... 131, 595
Krishto v. Radha, 12 Cal. 330 ... 189
Kundan Bibi v. Sree Narayan, 11 C. W. N. 135 ... 111
——Lal v. Bhikari Das, 51 All. 530 : 27 A. L. J. 333 : 116 I. C. 293 : (1929) All. 254 ... 585, 595
Kuoverbhun v. Moindas, 49 I. C. 193 ... 555
Kunhi Coya Haji v. Panikka Vittal Arsan Beva, 36 M. L. J. 188 : 25 M. L. T. 191 ... 580, 588
Kuppusami v. Narayanasami, 44 M. L. J. 510 : 32 M. L. J. 192 : 17 L. W. 676 : 70 I. C. 670 : (1923) Mad. 593 ... 543
Kurindaliammal v Kunhikanan, (1930) Mad. 141 : 123 I. C. 596 ... 71, 257. 466
Kutb-Ud-Deen v. Periya Nayaga, 51 Mad. 491 : 27 L. W. 450 : 109 I. C. 446 : (1928) Mad. 517 : 55 M. L. J. 114 ... 553
Kuthalingam Pillai v. Packiyam Fernandaz, 21 M. L. J. 422 : 8 M. L. T. 448 : 8 I. C 17 80, 85, 230, 543
Kuttayan Chetty v. Palaniappa Chetty, 27 Mad. 540 ... 397, 536, 538
Kutti Ammu v. Purushottam, 21 M. L. J. 526 : (1911) 1 M. W. N. 45 : 8 I C. 851 : 9 M. L. J. 120 ... 234
Kuttiasan v. Suppi, 3 M. L. J. 199 ... 560, 569
Kymer v. Laurie, (1849) 18 L. J. Q. B. 218 : 13 Jur. 426 : 83 R. R. 845 ... 156,353

L

Lacave & Co. v. Credit Lyonnais, (1897) 1 Q. B. 148, 155 : 66 L. J, Q. B. 226 : 75 L. T. 514 : 13 T L. R. 60 : 2 Com. Cas. 17 ... 495
Lacha Ram v. Hemraj, (1932) Lah. 30 ... 230, 336

PAGE

Lachman Prasad v. Ramachandra, 10 N. L. R. 128 : 57 I. C. 859 ... 89, 90, 288, 319
Lachmi Narain v. Fateh Bahadur Singh, 25 All. 195, 202 : (1903) A. W. N. 8 ... 109, 116, 502
Ladbroke & Co. v. Todd, (1914 W. N. 165 : 111 L. T. 43 : 30 T. L. R. 433 : 19 Com. Cas. 256 ... 495
Lakshmammal v. Narasimha, 38 Mad. 746 ; 25 M. L. J. 572 : 14 M. L. T 398 : (1913) M. W. N. 833 : 21 I. C. 455 ... 371, 374, 378
Lakshmi v. Vishnuram, 24 Bom. 77 : 1 Bom. L. R. 534 : ... 133
Lakshminarasayya v. Venkatakrishnayya, 15 L. W. 143 ... 188
Lakshminarayana Reddyar v. Subhadri Ammal, 13 M. L J. 7 ... 258
Lakshmi Nath v. Benares Bank Ltd., 7 Pat. 41 ... 34
Lal Chand v. Agra Bank Ltd., 18 I. A. 111 ... 349, 359
Lala Jethaji v. Bhaga Gopal, 3 Bom. L. R. 699 ... 36
Lala Tulsi Ram v. Ram Saran Das, 49 M. L. J 132, 136 : 22 L, W. 86 : 29 C. W. N. 965 : 25 A. L. J. 109 : 86 I C. 552 : 27 Bom, L. R. 777 (P C.) : 26 W. N. 256 : L. R. 6 P. C. 70 : 26 Punj. L. R. 419 : (1925) P. C. 80 ... 375, 381
Lala Shambu v. Lala Lallu, A. I. R. (1924) All. 256 : 4 All. 458 ... 463
Lala Mal v. Kesho Dass, 26 All 493 : 1 A. L. J. 254 : (1904) A. W. N. 100 ... 21, 22, 75, 161
Laljee Lal v. Hardey, 9 Cal. 105 : 11 C. L R. 125 ... 38
Lambert, *Ex parte*, (1806) 13 Ves. 179 ; 33 E, R. 162 ... 446, 451
Lameit v. Heath, (1846) 15 M. & W. 486 : 153 E. R. 941 : 4 Rail. Cas. 302 : 15 L, J. Ex, 297 : 10 Jur. 411 ... 226
Landes v, Marcus, (1909) 25 T. L. R. 478 ... 141
Lang v, Smyth, (1831) 7 Bing 284, 294 : 131 E. R 109 : 5 M. & P 78 : 9 L. J. (O. S.) C. P. 91 ... 498
Langton v. Lazarus, (1839) 5 M. & W. 629 : 151 E R. 266 : 9 L. J. Ex. 89 ... 383
Latham v. Chartered Bank of India, (1874) L. R. 17 Eq. 205 : 43 L. J. Ch. 612 : 29 L. T. 795 ; 2 Arp. M. L. C. 178 ... 189
Latter v. White, (1872) L. R. 5 H. L. 578 : 41 L. J. Q. B. 342, affirming S. C. in Ex. Ch. 25 L. T. 658 : 19 W. R. 1149 ... 216, 218
Lawes v. Rand. (1857) 3 C. B. N. S. 422 : 140 E. R. 812 : 27 L. J. C. P 76 : 4 Jur. (N. S.) 74 : 6 W. R. 127 : 111 R. R. 739 ... 301, 352
Laxmi Bai v. Sitaram. 51 I. C. 106 ... 336
Laxumi Bai v. Ganesh Raghunath, 25 Bom. 372 : 2 Bom. L. R. 1132, (F.B.) ... 28
Lindus v. Melrose, (1858) 3 H. & N. 177 : 27 L. J. Ex. 326 : 4 Jur. (N. S.) 488 : 6 W. R. 441 : 157 E. R 434 ; 117 R. R. 63... 139
Leach v. Buchanan, (1802) 4 Ex. Ch. 226 ... 166, 264
Leadbitter v. Farrow, (1816) 5 M, & S. 345, 349 : 105 E. R. 1077 : 17 R. R. 345 ... 127, 139
Leather v. Simpson, (1871) L. R. 11 Eq. 398 : 40 L. J. Ch. 177 ; 24 L T. 286 : 19 W. R. 431 ... 165, 204

PAGE

Lebel v. Tucker, (1867) L. R. 3 Q. B. 77 : 37 L. J. Q. B. 46 : 8 B. & S. 830 : 17 L. T. 244 : 16 W. R. 338 ... 174, 507
Ledu Coachman v. Hiralal, 43 Cal. 115; 19 C. W. N. 919: 21 C. L. J. 537 : 29 I. C. 625 ... 259
Lee v. Zagury, (1817) 8 Taunt, 114 : 129 E. R. 326 : 1 Moore C. P. 556 : 19 R. R. 476 ... 264, 530, 539
Leeds v. Lancashire, (1809) 2 Camp. 205 ...27, 31, 42, 528
——County Bank v. Walker, (1883) 11 Q. B. D. 84 : 52 L. J. Q. B. 590 : 47 J. P. 502 ... 40, 225, 371
——Banking Co., *Re Ex parte* Prange (1865) L. R. 1 Eq. 1 ; 35 L. J. Ch. 33 : 11 Jur. (N. S.) 920 : 13 L. T. 314 : 14 W. R. 43...397, 399, 401
Leftley v. Millis, (1791) 4 T. R. 170 : 2 R. R. 350 ; 100 E. R. 955 ... 261
Legg v Cheeseborough, (1859) 28 L. J. C. P 209 ... 531
Lehna Singh v. Ahmad Din, 174 P. L R. 1913 : 19 I. C. 436 ... 595
Lemayne v. Stanley, (1798) 3 Lev. 1 : 83 E. R. 545 ... 32
Leonard v. Wilson, (1834) 2 Cr. & M. 589 : 3 L. J. Ex. 171 : 4 Tyr 415 : 39 R. R. 855 : 149 E. R. 895 ... 133
Leslie Ltd., R. v. Sheill, (1914) 3 K. B. 607 : 83 L J. K. B 1145 : ... 111 L. T. 106 : 58 S. J. 453 : 30 T. L R. 460 ... 110
Lester v. Garand, (1808) 15 Ves. 248 : 33 E R. 748 ... 106
Levieson v. Lone, (1862) 32 L. J. C. P. 10 ; 13 C. B N. S. 278 : 143 E. R. 111 : 7 L. T. 326 : 11 W. R. 74 ... 130
Lewes Steam Laundry Co. v. Barclay, (1906) 95 L. T. 964 : 11 Com. Cas. 255 ... 264, 360, 362
Lewis v. Clay, (1897) 67 L. J Q. B. 224 : 77 L. T. 653 : 46 W. R. 319 : 14 T. L. R. 149 : 42 Sol. Jo. 151 ... 66
——v. Cosgrave, (1809) 2 Taunt, 2 : 127 E. R. 974 ... 257
——v. Lyster, 1835) 2 C. M. & R. 704, 706 : 4 D. P. C. 377 : 1 Gale 320 : 1 Tyr. & G. 185 : 150 E. R 298 ... 535
——v. Parker, (1836) 4 A. & E. 838 : 5 L. J. K. B, 170 : 6 N. & M. 294 : 43 R. R. 493 : 111 E. R. 999 ... 465
——v, Reilly, (1841) 1 Q. B 349 : 10 L. J. Q. B. 135 : 4 P. & D. 629 : 55 R. R. 262 : 113 E R 1165 ... 125, 241
Lichfield Union v. Greene, (1857) 26 L. J. Ex. 140 : 1 H. & N. 884 : 3 Jur. (N S.) 247 : 5 W. R. 370 : 138 R. R. 877 : 156 E. R. 1459 538
Liggett v. Barclay's Bank, (1928) 1 K. B. 48 : 97 L. J. K. B. 1 : 137 L T. 443 : 43 T. L. R. 449 ... 158, 360
Lilley v. Rankin, (1887) 56 L. J. Q. B. 248 : 55 L. T 814 : 3 T. L. R. 223 ... 261
Lindley v. Lacey, (1864) 34 L. J. C. P. 7, 9 : 17 C. B N. S 578 : 10 Jur. (N. S.) 1103 : 11 L. T. 273 : 13 W. R. 80 : 114 E. R. 232 220
Lindo v. Unsworth (1811) 2 Camp. 602 (N. P.) 12 R. R. 750 ... 413
Lindsay, Gracie & Co., v. Russian Bank for foreign trade, (1918) 34 T. L. R. 443 .. 457
Lindus v. Bradwell, (1848) 5 C. B. 583, 591 : 17 L. J. C. P. 12 : 12 Jur. 230 : 75 R. R. 798 : 136 E. R. 1007 121, 127, 128, 170
Little v. Slackford, (1828) 1 M. & M. 871 : 31 R. R. 726 ... 31, 44

PAGE

Liverpool Borough Bank v. Walker, (1859) 4 De. G. & J. 24 : 45 E. R. 10 ... 145, 146
Llewellyn v. Winckworth, (1845) 13 M. & W. 598 : 14 L. J. Ex. 329 : 67 R. R. 751 : 153 E. R. 250 ... 124
Lloyd v. Ashby, (1831) 2 B. & Ad. 23 : 9 L. J. (O. S.) K. B. 144 : 2 C. & P. 138 : 36 R. R. 454 : 109 E. R. 1052 ... 171
——v. Davis, (1824) 3 L. J. (O. S.) (K. B.) 38 ... 203
——v. Guilbert, (1865) L. R. 1 Q. B. 115, 129 : 35 L. J. Q. B. 74 : 6 B. & S. 100 : 13 L. T. 602 : 122 E. R. 1134 ... 511
Lloyd v. Howard, (1850) 15 Q. B. 995 : 20 L. J. Q B. 1 : 15 Jur. 218 : 117 E. R. 735 175, 217, 222, 272
——v. Oliver, (1852) 18 Q. B. 471 : 21 L. J. Q. B. 307 : 16 Jur. 833 : 118 E. R. 178 ... 55, 91
——v. Sigourney, (1829) 5 Bing. 525 : 3 M & P. 229 : 3 Y. & J. 220 : 30 R. R. 728 : 130 E. R. 1164 ... 238
Lloyds Bank v. Chartered Bank of India, (1929) 1 K. B. 40 : 97 L J. K. B. 609 : 139 L. T. 126 : 33 Com. Cas. 306 : 44 T. L. R. 534 66, 82, 99, 332, 360, 486, 487
——v. Cooke, (1907) 1 K B. 794 : 76 L. J. K. B. 666 : 96 L. T. 715 : 23 T. L. R. 429 66. 82, 96, 97
——v. F. O. Devidas, 98 I. C 72 : A. I. R. (1927) Sind 60 ... 556
——Banking Co. Ld. v Swiss Bankverein Union of London, (1913) 107 L. T. 309 : 108 L T. 143 : 29 T. L. R. 219 : 57 Sol. Jo 243 : 18 Com. Cas. 79 ... 68
Lodd Govind Das v. Munuswami Pillai, 9 M. L. T. 169 : 8 I. C. 881 61, 230, 542, 544
——v. Muniappa Naidu, 31 Mad. 534 : M. L. T. 341 ... 61, 543
Lomas v Bradshaw, (1850) 19 L. J. C. P. 273 : 9 C B. 620 : 137 E. R. 1034 ... 72
London & Birmingham Bank, *Re*, (1865) 34 L J. Ch. 418 : 11 Jur. N. S. 316 : 12 L. T. 45 : 13 W. R. 446 ... 536
——& County Bank v. Groome, (1881) 8 Q. B. D. 288 : 51 L. J. Q. B. 224 : 46 L. T. 60 : 30 W. R. 382 : 46 J. P. 614 ... 268, 269
——v. River Plate Bank, (1887) 20 Q. B. D. 232 : 4 T. L. R. 179 in affirmed (1882) 21 Q. B. D. 535 (C. A.) : 57 L. J. Q B. 601 : 61 L. T. 37 .. 37 W. R. 89 ... 63
——& Montrose Shipbuilding Co. v. Barclays Bank, (1926) 31 Com. Cas. 67 : reversed on facts; 31 Com. Cas. 182 ... 257, 360
——& Provincial Bank v. Roberts, (1874) 22 W. R. 402 ... 379
——& River Plate Bank v. Bank of Liverpool, (1896) 1 Q. B. 7 : 65 L. J. Q B. 80 : 73 L. T. 473 : 1 Com. Cas. 170 74, 331, 332, 360. 452
——& South West Bank v. Wentworth, (1880) L. R. 5 Ex. D. 96 ; 49 L J. Ex. 657 : 42 L. T. 188 : 28 W. R. 516 96, 98, 197, 198
——Banking Corporation v Horsnail, (1898) 3 Com. Cas. 105 : 14 T. L R. 266 ... 330
—— Chartered Bank of Australia v. Mc. Millian, (1892) A. C. 292 : 61 L. J. P. C. 44 : 66 L, T. 801 (P. C.) ... 330

PAGE

——Bombay & Mediterrarean Bank, *In re, Exparte* Cama, (1874) 9 Ch. App. 686 : 43 L. J. Ch. 683 : 31 L. T. 234 : 22 W. R 809... 206
——v. White, (1879) 4 A. C. 413 : 48 L. J. C. P. 75 ... 157
——Joint Stock Bank v. Macmillan and Arthur, (1918) A. C. 777, 814 : reversing (1917) 2 K. B. 439 155, 254, 356, 361, 362, 363, 384, 386
——v. Simmons, (1892) A. C. 201, 221 : 61 L. J. Ch. 723 : 66 L T. 625 : 41 W. R 108 : 56 J. P. 644 : 8 T. L. R. 478 : 36 Sol. Jo. 394 reversing (1891) 1 Ch. 270 ... 67, 254
Long v. Moore, (1750) 3 Esp. 155 (notes) ... 373
Lord v. Hall, (1849) 8 C. B 627 : 19 L. J. C P. 47 : 79 R. R 649 : 137 E R. 653 ... 124, 137
Lovell v. Hill, (1833) 6 Car. & P. 238 ... 30
——v. Martin, (1813) 4 Taunt 799 : 14 R. R 668 : 128 E. R. 545 ... 210
Lowl v. Copestake, (1828) 3 C. & P. 300 ... 231
——& Co. v Sudhanna Kumar, 35 C. W. N. 587 : 58 Cal. 1453 : (1931) Cal. 791 ... 15
Lowe v. Peers, (1768) 4 Bur. 225 : 98 E. R. 160 : Wilmot 364 ... 259
Lowenthal, *Ex parte*, Lowenthal, *Re*. (1874) L. R. 9 Ch App. 591, 593 : 43 L. J, Bk. 83 : 30 L T 668 ... 426
Luchmichand Jhowar v. Hemendra Prosad Ghosh, 18 C. W. N 1260 : 26 I. C. 736 ... 336
Lumley v. Musgrave, (1837) 4 Bing. N C 9, 15 : 7 L J C. P. 49 : 5 Scott 230 : 3 Hodges, 247 : 1 Jur 799 : 132 E R. 691 ... 539
Lundie v Robertson, (1806) 7 East. 231 : 2 Smith 225 : 103 E R. 89 ... 415
Luttges v. Sherwood, (1895) 11 T. L. R. 233 ... 218
Lynn v Bell, (1876) 10 Ir. R. C. L. 487, 490 ... 50
Lysaght v. Bryant, (1850) 9 C. B. 46 : 19 L. J. C. P 160 : 2 Car. & K. 1016 : 82 R. R. 276 : 137 E. R 808 ... 393

M

M. N. P. L. Firm v. Kirwan Gyan, 5 Bwr L. T. 162 : 17 I. C. 915 (L. B.) ... 96
M'Call v. Taylor, (1865) 34 L J. C. P. 365 : 12 L. T. 461 : 11 Jur. (N. S.) 529 : 13 W. R. 840 : 19 C B N. S. 301 : 6 New Rep 207 : 12 L. T 461 : 114 E. R. 803 ... 45, 90
Ma Hnit v. Hashim Ebrahim Meter, 38 M. L J 353 (P. C.) : 55 I. C. 793 : 18 A L. J. 335 : 32 C. L J. 214 : (1920) M. W. N. 319 : 22 Bom. L. R. 531 : 27 M. L. T. 190 : 2 U. P. L. R. (P. C) 758 ... 110, 111, 142
Ma Kin v. C. T. L. Alagappa Chetti, U. B. R. (1902) Neg. Instr. I. 381
Ma Nyi Ma v. Ma Maung & Yan Shin, 57 I. C. 881 (U. B.) ... 58
Ma Pwa May v. S. R. M. M. A. Chettiyar, 7 Rang. 624 (P. C.) : 56 I. A. 379 : 58 M L. J. 59 : ... 578
——Sein v. Chidambaram Chetty, 4 Bur. L. T. 19 : 9 I. C. 463 ... 376

PAGE

——Shawe Yu v. K. N. K. Raman Chetty, (1902) I. L. B. R. 255 ... 380, 381
——Thin Za v. Veerai Kalai, (1931) Rang. 193 : 131 I. C. 503 : ... 604
Macbeth v. North and South Waies Bank, (1908) I. K. B. 13 : (1908) A. C. 137 : 77 L. J. K. B. 464 : 98 L. T. 470 : 24 T. L. R. 397 : 52 Sol. Jo. 353 : 13 Com. Cas 219 : ... 198, 223
Macdonald v. Whitefield, (1883) 8 A. C. 733 : 52 L. J. P. C. 70 : 49 L. T. 466 : 32 W. R. 730 168, 177, 182, 184, 465, 527
Machaima v. Usman Beari, 17 M. L. J. 78 ... 113
Macintosh v. Haydon, (1826) Ry. & M. 362 : 27 R. R. 757 291, 372, 374
Mackenzie v. British Linen Co., (1881) 6 A. C. 82, 99 (H. L.) : 44 L. T. 431 : 29 W. R. 477 ... 166
——v. Tiruvengadathan, 9 Mad 271 : ... 567
——Lyall & Co, v. Chamroo Singh & Co., 16 Cal. 702 ... 19
Maclae v. Sutherland, (1854) 3 E. & B. 1 : 23 L. J. Q. B. 229 : 2 C. L. R 1320 : 18 Jur. 942 : 2 W. R. 161 : 97 R. R. 332 : 22 L. T. O. S. 254 : 118 E. R. 1038 ... 133
Macleod v. Snee, (1726) 2 Stra. 762 : 2 Ld. & Raym. 1481 : 93 E. R. 833 ... 44
Macmillian v. London Joint Stock Bank, Ld., (1917) 2 K. B. 439 ... 155
—— v. Sir Alfred, 18 T. L. R. 650 ... 584
Madam Pillai v. Athinarayan, 21 L. W. 532 : 87 T. C. 48 : 1925 Mad 929 376, 380, 383
Madan Lal v. Lal Chand, 49 All. 457 : 25 A. L. J. 402 : 100 I. C. 703 : (1927) All. 463 ... 58
Madho Ram v. Durga Prasad, 33 All. 4 : 7 A. L. J. 815 : 6 I. C. 793 : 316, 397, 412, 416
——v. Nandu Mal, 1 Lah. 429 : 58 I. C. 982 ... 21, 462
Madhub Durgur v. Woopendra Narain, 23 Cal. 573 ... 570
Magnus v. Queensland National Bank, (1888) 37 Ch. D. 466 : 57 L. J. Ch. 413 : 58 L. T. 248 : 36 W. R. 577 ... 157
Mahadeo v. Khewal Ram, 44 I. C. 223 (Nag) ... 260
——Kori v. Sheoraj, 41 All. 169 : 17 A. L. J. 19 : 52 I. C. 974 ... 604
Mahalakshmi Bai v. The Firm of Nageshwar Purshotam, 10 Bom. 71 ... 31
Mahamad Pulawar v. Paramesvara Patter, 16 M. L. J. 418 ... 258
Maharaj Pragdin v. Baghavati Saha, 66 I. C. 687 (Oudh) : (1929) Oudh, 193 ...
Maharaja, v. Sendanatha, (1918) M. W. N. 173 ... 62 66
Mahomed Ismail v. Vahiuddin, 92 I. C. 503 : 1926 All. 270 ... 259
——Rowthan v. Mahomed Husain Rowthan, 22 Mad. 337 9 M. L. J. 185 ... 511, 588
——Syedol Ariffin v. Yeoh Ooi Gark, 43 I. C. 256 ... 110
——Unis v. Janesher Das, (1929) All. 881 ... 565
——Vazeeralli Khan v. Suryanarayana, 1 M. L. J. 388 ... 377
Mahony v. East Holyford Mining Co., (1875) L. R. 7 H. L. 869 ... 117
Maillard v. Argyie, (1843) 6 M. & Gr. 40 : 134 E. R. 801 ... 533

PAGE

——v. Page, (1870) L. R. 5 Ex. 312 : 39 L. J. Ex. 235 : 23 L. T. 80... 529, 530
Maitland v. Backhouse, (1847) 16 Sim. 58 : 17 L. J. Ch. 121 : 10 L. T. O. S. 243 : 11 Jur. 1000 : 60 E R. 794 : ... 266
Majibar Rahman v. Muktashed, 40 Cal. 113 (P. C.) : 16 C. W. N. 854 : 15 I. C. 259 ... 260
Makhbul Ahmed v. Alfti Khurunissa, 7 N. W. P. H. C. R. 124 ... 30
Makhdum Bakhsh v. Shawkat Ali, 13 A. L. J. 683 : 29 I. C. 1008 ... 372
Male v. Roberts, (1800) 3 Esp. 163 : 6 R. R. 823 ... 502
Man Niyun v. Maung San Mya, 6 Rang 590 : 114 I. C. 294 : (1924) Rang. 9 ... 598
Manchersha v. Govind Ganesh, 32 Bom. L. R. 1035 : 128 I. C. 43 : (1930) Bom. 424 ... 121, 546
Mangal Das v. Jaswant Singh, (1930) Lah. 959 : 31 P. L. R. 930... 378
——Sain v. Connon, 118 P. R. 1885 ... 381
Mangamma v. Sathiraju, 31 M. L. J. 816 : 5. L. W. 246 : 37 I. C. 681 39, 66, 173, 217, 549
Mani Ram v. Rupchand 32 Cal. 1047 : 4 C. L. J. 94 : 8 Bom. L. R. 501 : 10 C. W. N. 874 : 1 M. L. T. 199 : 3 A. L. J. 525 : 16 M. L. J. 300 : 33 I. A. 165 (P. C.) ...
Manikchand v. Jomoona Doss, 8 Cal. 645 ... 30
Manilall Singh v. Trustees for Improvement of Calcutta, 45 Cal. 343, 365 ... 10
Mann v. Moors, (1825) 1 Ry. & Moo. 249 ... 403
Manoel v. The Hongkong & Shanghai Banking Corporation, 14 Bom. 498 ... 12
Mare v. Charles, (1856) 5 E. & B. 979, 981 : 25 L. J. Q. B. 119 : 2 Jur. (N. S.) 234 : 4 W. R. 267 : 103 R. R. 831 : 119 E. R. 745 ... 90
Marimuthu Pillai v. Krishnaswami Chetty, 17 Mad. 197 : 4 M L. J. 60 ... 180, 231, 327
Marine Insurance & Co. v. Haviside, (1872) L. R. 5 H. L. 625 : 42 L. J. Ch. 173 ... 465
Marseilles Extension Railway and Land Co., *Re*, (1885) 30 Ch. D. 598 : 55 L. J. Ch. 116 : 1 T. L R. 527 ... 503
Marsh v. Maxwell, (1809) 2 Camp. 210 (Note) : 11 R. R. 696 (n) ... 439
——v. Pedder, (1815) 4 Camp. 257 : Holt. N P. C. 72 ... 534
Marshall & Co. v. Nagin Chand, 42 Bom. 473 ... 203
Marston v. Allen, (1841) 8 M. & W. 494, 504 : 11 L. J. Ex 122 : 1 D. (N. S.) 442 : 151 E. R. 1134 ... 217, 222
Martin v. Chauntry, (1748) 2 Stra. 1271 : 93 E. R. 1175 ... 35
——v. Morgan, (1819) 3 Moore 635 : 1 Br. & B. 289 : Gow. N. P. 122 : 21 R. R. 603 : 129 E. R. 734 ... 226
Martis v. Cuthbert D'souza, 62 M. L. J. 538 (F.B.) : 137 I. C. 26 : (1932) M. W. N. 121 : 35 L. W 518 : (1932) Mad. 390 ... 578
Marzetti v. Williams, (1830) 1 B & Ad. 415 : 9 L.J. (O.S.) K. B. 42 : 35 R. R. 329 : 109 E. R. 842 154, 156, 164, 459

PAGE

Mascarenhas v. Mercantile Bank of India, 56 Bom. 1 (P.C.) : (1932) P. C. 22 : (1932) M. W. N. 100 : 61 M. L. J. 837 : 36 C. W. N. 35 : 54 C. L. J. 419 : (1931) A. L. J. 1136 ... 264, 530
Mason v. Bradley, (1843) 11 M. & W. 590 : 1 D. & L. 380 : 12 L. J. Ex. 425 : 7 Jur. 496 : 152 E. R. 941 ... 376
——v. Franklin, 3 Johns. 202 (Amer.) ... 427
——*Ex parte*, (1815) 2 Rose 225 ... 35
——v. Lack, (1929) 45 T. L. R. 363 : 140 L. R. T. 696 ... 45, 46,89
——v. Metcalfe, 8 Baxt 440 (Amer) : Daniel, P. 4 ... 31
Master v. Miller, (1791) 4 T. R. 320 : 4 H. Bl. 140 : 2 R. R. 399 : 100 E. R. 1042 ... 370, 372
Masters v. Barteto, (1849) 2 C. & K. 715 : 8 C. B. 433 : 19 L. J. C. P. 50 : 14 L. T. 153 : 13 Jur. 1124 : 137 E. R. 578 ... 298
——v. Ibberson, (1849) 8 C. B 100 : 18 L. J. C. P. 348 : 137 E R. 446 ... 248
Mata Prasad v. Narain Prasad, 86 I. C. 482 ... 30
Mathappa Chetty v. Chellappa Chetti, 1 Mad. 196 ... 505
Mather v. Maidstone, (1856) 25 L. J. C. P. 310 : 18 C. B. 273 : 107 R. R. 290 : 139 E. R .1374 ... 468, 539
Mathews v. Baxter, (1873) L. R. 8 Ex. 132 : 42 L. J. Ex. 73 : 28 L. T. 169 : 21 W. R. 389 ... 114
Matthew, *Ex parte*, (1884) 12 Q. B. D. 506 : 51 L. T. 179 : 32 W. R 813 : 1 Morrell. 47 ... 536
——v. Sherwell, (1810) 2 Taunt. 439 : 1 Rose 118 : 127 E. R. 1148... 162
——v. Brown & Co., (1894) 63 L. J. Q. B. 494 ... 495
——v. Girdharilal, 7 B. H. C. R. 2 (O. C. J.) ... 20, 225
Mathewson v. Ram Kanaising, 16 I. C. 387 (Cal.) ... 187, 191
Mathiessen v. The London & County Bank, (1879) L. R. 5 C. P. D. 7 : 48 L. J. Q. B. 529 : 41 L. T. 35 : 27 W. R. 838 : 43 J. P. 560 ... 484, 493
Mathura Das v. Babu Lal, 1 All. 683 ... 31, 32
Mathuraubhai Hira Bhai v. Dalpat Damodar, 3 Bom. L. R. 839 ... 29
Mati Sheik v. Baikantha, 18 C. L. J. 269 : 20 I. C. 809 ... 63
Maung Aung Min v. Muthu Crupen, 1 Bur. L T. 50 ... 80
——Kyi v. Ma Ma Glae, 10 L. B. R. 54 ... 227
——Lee Gale. v. Prohatdo, 84 I. C. 199 ... 596
——Me v. Ma Sein, 5 L. B R. 46 : 2 I.C 539 ... 462, 466
——v. Ma Sein, 5 L. B. R. 192: 8 I. C. 962 ... 62
——Myo v. Ma Myin, (1928) Rang 263: 114 I. C. 289 ... 586
——Pho Mya v. Dawood & Co., 66 I.C. 584 : 11 L. B. R. 187 ... 234, 235
——Po v. Maung Kaw, 44 I. C 693 ... 187
——Po Tha v. L. D' Attaides, 5 L. B R. 191 : 8 I C. 962 ... 16
——Poye v. Ye Chein Hug, 1 Bur. L. J. 172 : (1923) Rang. 97 ... 34
——Pyo v. Maung Po Gyi, 50 I. C. 551 (U.B.) : 3 U. B. R. (1918) 119 ... 259

PAGE

——San Shwe v. Hajiko, 9 Rang. 32 : (1931) Rang. 131 : 132 I. C. 707 ... 32
——Saw v. Ingrasami, 56 I. C 259 ... 58
——Sein v. Ma Saw, (1924) Rang. 360 : 82 I. C. 816 : 3 Bur. L. J. 112 ... 182, 184, 525
——Shwe Myat v. Maung Posin, 3 Rang. 183 (F.B.) : 4 Bur. L. J. 141 : 89 I. C. 425 : (1925) Rang. 282 ... 595
Maxwell v. Brain, (1864) 10 L. T. N. S. 301 : 10 Jur. 777 : 12 W. R. 688 ... 404
May v. Chapman, (1847) 16 M. & W. 355 : 73 R. R. 529 : 153 E. R. 1225 ... 248
Mayer v. Jadis, (1833) 1 M. & Rob. 247 ... 180
Mayor v. Johnson, (1833) 3 Camp. 324 ... 340
——of Ludlow v. Charlton, (1840) 6 M. & W. 815 : 10 L. J. Ex. 75 : 4 Jur. 657 : 151 E. R. 642 ... 118
McAyoob v. Sowdager, (1923) Rang. 127 ... 208
McCall Bros v. Hargraves, (1932) 2 K. B. 423 (1932) W. N. 150 : 48 T. L. R. 450 ... 86
McDonald & Co. v. Nash & Co., (1924) A. C. 625 : 93 L. J. (K. B.) 610 : 131 L. T 438 : 40 T. L. R. 530 : 29 Com. Cas 313 ... 86, 243, 527
McDowall v. Boyd, (1848) 17 L. J. Q. B. 295 : 6 D & L. 149 : 12 Jur. 990 : 2 B. C. Rep. 298 ... 535
McEntire v. Potter, (1889) 22 Q. B. D. 438 : 60 L. T. 600 : 37 W. R. 607 ... 332
Mac Kenzie v. British Linen Co., (1881) 6 A. C. 82 : 44 L T. 431 : 29 W. R. 477 ... 166, 265, 363
M'Lean v. Clydesdale Banking Co , (1883) 9 A. C. 95, 107 : 50 L. T. 457, 482, 484 49, 52, 64, 161, 493, 494
McLeod v. Ivan Jones & Co., (1926) Cal 189 : 87 I. C. 218 ... 202, 222
McManus v. Bark, (1870) L. R. 5 Ex. 65 : 21 L. T. 676 : 39 L. J. Ex. 65 ... 529
McMillan v. Sir Alfred, 18 Times L. R. 650 ... 561
Mead v. Young, (1790) 4 T. R. 28 : 3 R. R. 314 : 100 E. R. 876 ... 86
Medisetti Pentayya v. Pilli Venkatareddy, (1912) 1 M. W. N. 444... 16
Meenakshi Ginning & Pressing Co v. Sreeramulu Naidu, 28 Mad. 19 ... 38
Meenakshisundaram v. Ranga, 35 L. W. 397 ... 132, 142, 547
Meghraj v. Johnson, 31 I. C. 880 : 11 N. L. R. 189 ... 39
Megraj Jaganath v. Gokaldas Mathura Das, 7 B. H. C. R. (O.C.J.) 127 ... 152, 175, 398
Mehlu Mal v. Bholu, 9 Lah. L. J. 186 : 28 P. L. R. 277 : 102 I. C. 295 ... 545
Mehta Bahadur Chand v. Ghulab, 11 Lah. 34: 31 Punj L. R. 794 ... 281
Melanotte v. Teesdale, (1844) 13 M. & W. 216 : 13 L. J. Ex. 258 : 67 R. R. 572 : 153 E. R. 90 ... 28
Melaram v. Brij Lal. 54 I. C. 976 (Lah) : 148 P. R. 1919 ... 30, 36, 584

PAGE

Mellersh v Rippen, (1852) L. R. 7 Ex. 578 : 21 L. J. Ex. 222 : 16 Jur. 366 : 155 E. R. 1079 ... 405
Mellish v. Rawdon, (1832) 9 Bing. 416, 422, 424. 425 : 2 L. J. C. P. 29 : 2 Moo & S. 570 : 35 R. R. 579 : 131 E. R. 672 ... 281, 282
——v. Simeon, (1794) 2 H .Bl. 378 : 3 R. R. 418 : 126 E. R. 605 ... 458
Mendizabal v. Machado, (1833) 6 C. & P. 218 : 3 M. & Sc. 841 : 3 L. J. C. P. 70 ... 366
Merbai & Rettonji v. Perozbai, 5 Bom. 268 ... 40, 81
Mercantile Bank of India Ltd. v. Caeiro, 52 Bom. 807 : 30 Bom. L. R. 1222 : A. I. R. (1928) Bom. 434 ... 264
——v. D. Silva, 52 Bom. 810 ; affirmed on appeal 56 Bom. 1 : 30 Bom. L. R. 1225 ; (1928) Bom. 436 : 112 I. C. 824 ... 13, 36
——v. Mascarenhas, 52 Bom. 792 affirmed on appeal 56 Bom. 1, 30 Bom. L. R. 1210 : (1928) Bom. 407 : 61 M. L. J. 837 : (1932) P. C. 22 : (1932) M. W. N. 100 : 54 C. L. J. 419 : (1931) A. L. J. 1136 (P.C.) ... 12, 264
Meredith, & Conver's claim *Ex parte* (1863) 32 L. J. Ch. 300 : 8 L. T. 146 ; 11 W. R. 416 : 9 Jur. N. S. 298 ... 507
Messenger v. Southey, (1840) 1 M. & Gr. 76 : 9 L. J. C. P. 278 : 8 D. P. C. 594 : 1 Scott. N. R. 180 : 133 E. R. 254 ... 405
Metcalfe v. Richardson, (1852) 11 C. B. 1011 : 138 E. R. 776 ... 401, 402
Meyer & Co, v. De Croix, (1891) A. C. 520 (H. L.) : 61 L. J. Q. B. 205 : 65 L. T. 653 : 40 W. R. 513. 7 T. L. R. 729 : 25 Q. B. D. 343 .... 78, 369, 381
——& Co. Ltd. v. Sze Hai Tong Banking Co., (1913) A. C. 847 ... 68, 481
Mi Ke v. Nga Kan Gyi, 4 I. C. 1086 : 11 U. B. R. (1907-1909) ...
Mian Baksh v. Bodhiya 50 All. 839 : 26 A. L. J. 729 : 115 I. C. 630 : (1928) All. 371 15, 17, 472, 595
Midland Bank v. Inland Revenue Commissioners, (1927) 2 K. B. 465 ... 574
——v. Reckkitt, (1932) 48 T. L. R. 271 : 37 Com. Cas. 202 ... 490, 492
Miers y. Brown, (1843) 11 M. & W. 372 : 12 L. J. Ex. 290 : 152 E. R. 847 ... 397, 401
Mile's claim, *In re*, (1874) L. R. 9 Ch. 635 ... 127
Miller, A, B. v. The National Bank of India, 19 Cal. 146, 155. 148, 150, 151, 404
——v. Dell, (1891) 1 Q. B. 468 : 63 L. T. 693 : 39 W. R. 342 ... 569
——v. Race, (1758) 1 Smith L. C, (12th Edn.) 525 : 1 Burr. 452 : 97 E. R. 398 ... 12
Miller v. Thompson, (1841) 3 M. & Gr. 576 : 11 L. J. C. P. 21 : 6 Scott N. R. 204 : 1 D. (N. S.) 199 : 133 E. R 1271 ... 55, 90, 414
Mills v. Barber, (1836) 1 M & W. 425 : 5 L. J. Ex. 204 : Tyr. & G. 835 : 2 Gale 5 : 5 D. C. P. 77 : 45 R. R. 336 : 150 E. R. 500 ... 205, 464, 468
——v. Gibson, (1847) 16 L. J. C. P. 249 : 73 R. R. 811 ... 415
——v. Oddy, (1825) 2 Cr. M. & R. 103 : 4 L. J. Ex. 168 : 1 Gale 92 : 3 D. P. C. 722 : 6 C & P. 728 ... 257

PAGE

Milnes v. Dawson, (1850) 5 Ex. 948 : 20 L. J. Ex. 81 : 82 R. R. 939 : 155 E. R. 413 ... 65
Mir Sarwarjan v. Fakruddin Mahomed Chowdhuri, 39 Cal. 232 : 16 C. W. N. 74 (P. C.) ... 141
Miron Baksh v. Mohamed Hussain, 2 P. R. 1902 ... 463
Mirza Hidayat Ali Beg v. Naga Kyaing, (1914) 11 U. B. R. 13 : 24 I. C. 721 (L. B.) ... 472, 495
Mitchell v. Baring, (1829) 10 B & C. 4 : 4 Car. & P. 35 : M. & M. 381 : 8 L. J. (O. S.) K. B. 18 : 109 E R. 352 ... 427
——v. Norwich Union Life Insurance Society, (1918) 1 K B. 123 : (1918) 2 K. B. 67 : 87 L. J. K. B. 695 : 119 L. T. 111 : 62 S. J. 487 : 34 T. L. R. 359 ... 218
——v. Westover, 14 Jur. 816 : 15 L. T. 113 ... 29
Mitchinson v. Hewson, (1797) 7 T. R 348 ... 235
Mithan v. Paltu, 14 I. C. 51 ... 410
M'Kenzie v. British Linen Co., (1881) 6 A.C. 82 : 44 L. T. 431 : 29 W. R. 477 ... 265
M'Lean v. Clydesdale Banking Co., (1883) 9 A C. 95 : 50 L. T. 457 49, 52, 493, 494
Moffat v. Edwards, (1841) 1 Car. &. M 16 ... 29, 295
Mohamed Abdulla v. Ford & Macdonald & Co., (1930) All. 124 : 124 I. C. 24 ... 604
Mohammed Amir Mirza Beg v. Kedar Nath, 15 O. C. 58 : 15 I C. 202 ... 584
Mohan Lal v. Kesari Mull, 15 M. L. T. 203 : 23 I. C. 110 ... 562, 585
Mohendro Lall Bose v. Jadhub Kissen Singh, 14 W. R. (A. O. J.) 5, 7 : Bourke O C. 157 ... 10, 188
Mohesh Chunder Chatterjee v. Kamini Kumari Dabia, 12 Cal. 313. 370, 377
Mohindra v. Nagina, (1932) Lah. 22 ... 27, 28
Mohori Bibi v. Dharmodas, 30 Cal. 539, (P. C.) 30. I. A. 114 : 7 C. W. N. 441 : 5 Bom. L. R. 421 ... 109
Mohun Lal v. Tika Ram, 41 All. 104 : 16 A. L. J. 929 : 47 I. C. 926
Molton v. Comroux, (1849) 4 Ex. 17 : 18 L. J. Ex. 68 : 12 Jur. 800 : 76 R. R. 669 : 154 E. R. 1107 ... 114
Mon Mohun v. Durga Churn, 15 Cal. 502. ... 567
Monetary Advance Co. v. Cater, (188) 20 Q. B. D. 785 : 57 L J. Q B 463 : 59 L. T. 311 : 4 T. L. R. 464 ... 530
Monmohinee Debi v Secretary of Sate for India, 13 B. L. R. 359, 373 : 22 W. R. 106 ... 81, 84, 147
Mon Motha v. Nabinchandre, 14 C. W. N. 1100 : 7 I. C. 214 : 14 C. L. J. 97 ... 333
Montague, *Re, Ex parte* Ward, (1897) 76 L. T. 203 : 45 W. R. 384. 163
——v. Perkins, (1853) 22 L. J. C. P. 187 : 17 Jur. 557 : 1 W. R. 437 : 94 R. R. 862 : 21 L. T. 185 95, 98, 99. 562
Moolchand v. Alwar Chetty, 39 Mad. 548 : 17 M. L. T. 449 : 20 I. C. 303 ... 347
Moore v. Petchell, (1856) 22 Beav. 172 : 52 E. R. 1073 ... 563

PAGE

Morgan v. Davison, (1816) 1 Stark. 114 ... 291
——v. Richardson, (1806) 1 Camp. 40 : 7 East 482 :
3 Smith K. B. 487 : 103 E. R. 187 ... 210
Morison v. Kemp, (1912) 29 T. L. R. 70 ... 122
——v London County & Westminster Bank, (1914) 3 K. B. 356 :
83 L. J. K. B. 1202 : 111 L. T. 114 : 30 T. L. R. 481 :
58 Sol. Jo 453 : 19 Com Cas. 273 : (1915)
W. N. 84 122, 134, 135, 331, 332, 360, 486, 487, 491, 492
Morley v. Culverwell, (1840) 7 M & W. 174, 180, 182 :
10 L. J. Ex. 35 : 1 H. & W. 13 : 4 Jur. 1163 : 56 R. R. 676 :
151 E. R. 727 70, 73, 274, 326, 329, 358
Moris v. Baron & Co., (1918) A. C. 1 ... 526
——v. Bethel, (1869) L. R. 5 C. P. 47 : 21 L. T. 323 :
18 W. R. 137 ... 124, 265
——v. Lee, (1725) 8 Mod. 362 : Ld. Rym. 1396 : 1 Stra 629 :
88 E. R. 258 ... 30
——v. Walker, (1850) 15 Q. B. 589 : 19 L. J. Q. B. 400 : 14 Jur. 851 :
81 R. R. 711 : 117 E. R. 582 ... 180
Morrison v. Buchanan, (1833) 6 C. & P. 18 ... 285, 324
——v. Veeschoyle, 6 C. W. N. 429 ... 386
Moss v. Hancock, (1899) 2 Q B. 111, 118 : 68 L. J. Q. B. 657 :
80 L. T. 693 : 47 W. R. 698 : 63 J. P. 517 : 19 Cox. C. C. 324 :
15 T. L. R. 353 ... 254
Mossop v. Eadon, (1810) 16 Ves. 430 : 83 E. R. 1047 ... 340
Motaboy v. Mulji Haridas, 39 Bom. 399 : 19 C. W. N. 713 :
2 L. W. 524 : 17 Bom. L. R. 460 : 17 M. L. T. 402 :
28 M. L. J. 589 : 13 A. L J 529 : 21 C. L. J. 507 :
(1915) M. W. N. 522 : 29 I. C. 223 : 42 I. A. 103 (P. C.) ... 526
Mothoora Mohun Roy v. Peary Mohun Shaw, 4 Cal. 259 :
2 C. L. R. 409 ... 595
Moti Gulab Chand v. Mohamed Mehdi Sharda Thopan,
20 Bom. 367, 369 ... 463
Moti Lal v. Moti Lal, 6 All. 78, 81 23, 152, 180, 397, 416
——v. Unao Commercial Bank, 59 M. L. J. 661 : 35 C. W. N. 1 :
52 C. L. J. 534 : (1930) M. W. N. 955 : (1930) A. L J. 1358 ... 122, 129, 130
533, 536
Motishaw & Co. v. The Mercantile Bank of India, 41 Bom 566
18 Bom. L. R. 521 : 37 I. C. 288 ... 165, 203
Mottai v. Thanappa, 37 Mad. 385 : 26 I. C. 181 ... 260
Moule v. Brown, (1838) 4 Bing. N. C. 266 : 7 L. J. C. P. 111 :
3 Scott. 694 : 2 Jur. 277 : 44 R. R. 705 : 132 E. R : 790 .. 433
Moulis v. Owen, (1907) 1 K B 746 (C. A.) : 76 L. J. K B. 396 :
96 L T. 596 : 51 Sol. J. 306 : 23 T. L. R. 348 ... 260, 261, 507
Mountford v. Harper, (1847) 16 M. & W. 825 : 16 L. J. Ex. 184 :
153 E. R. 1425 ... 50
Mowji Shamji v. National Bank of India, 25 Bom. 499, 515 :
2 Bom. L. R. 1041 61, 156, 160, 180

PAGE

Mt. Abida Begum v. Ramachandran, (1923) Oudh 176 : 74 I. C. 316 : 10 O. L. J. 43 : 26 O. C. 204 ... 62
Mt. Bashiram v. Bhishamber, (1922) Oudh 288 : .. 66
Mt. Kaunsilla v. Dip Singh, (1929) All. 812 ... 566
Muhamad v. Vahuddin, 92 I. C. 503 : (1926) All. 270: 24 A. L. J. 311 ... 259
Mt. Kundan Bibi v. Sree Narayana, 11 C. W. N. 135 ... 64
——Begum v. Durga Prasad, 40 I. C. 152 ... 139
Muhamed Sah Sheji Khan v. Mozam Ali, 61 I. C. 684 (All) ... 462, 463
Muhammad Ishauq Khan v. Islam Ullah, 31 I. C. 698. ... 39
——Khumarali v. Ranga Rao, 24 Mad. 654, 656 79, 85, 174, 229, 241
——Muzaffar Ali, In the matter of, 44 All. 339 : 26 A. L. J. 161 : 65 I. C. 811 : (F. B.) ... 602
Muilman v. D' Eguino, (1795) 2 H. Bl. 565 : 126 E. R. 705 ... 281
Mukyaprana v. Kelu. (1928) Mad. 705 : 112 I. C. 27. ... 566
Mulchand v. Madho Ram, 10 All. 421 : (1888) A. W. N. 127 ... 193
——Joharimal v. Suganchand Shivdas, 1 Bom. 23 . 151, 396
Mulji Lala v. Lingu Makaji, 21 Bom. 201 ... 596
Muller Maclean & Co. v. Ataulla & Co., 51 Cal., 320 ... 457
Mullins v. Beddy, 6 N. W. P. H. C. R. 150 ... 62
Mulraj v. Viswanth, 37 Bom. 198 : 12 M. L. T. 652 (P. C.) ... 64
Mundo Singh v. Mahant Krishna Dargal, 75 I. C. 98 ... 597
Mungniram v. Gursahai, 17 Cal. 347 : 16 I. A. 195 : 5 Sar. 463 (P. C.) 109
Mungumal Jessa Singh v. A.L.V.R.C.T. Firm, (1917) M. W. N. 344 : 4 M. L. T. 309. 17, 128, 138, 143, 169
Muniya Konan v. Perumal Konan, 24 M. L. J. 352 ... 112
Munro v. Bordier, (1849) 8 C. B. 862 : 19 L J. C P 133 : 14 Jur. 507 : 79 R. R. 785 : 137 E. R. 747 ... 72
Murlidhar v. Hukumchand, (1932) Lah. 312 : 33 P L. R. 19 .. 21
——v. Supdu, 3 Bom. 149 ... 117, 119
Murray v. East India Co., (1821) 5 B. & Ald. 204, 24 R. R. 325 ... 125, 146
—— v. King, (1821) 5 B. & Ald 169 : 106 E. R. 1153 ... 401
Murugappa v. Munuswami, 38 M. L. J. 131 ... 188, 191
Murugesa Chetti v Annamalai Chetti. 23 Mad 458 : 10 M.L.J. 39... 507
Murugesam Pillai v. Manickavasaka Desika, 40 Mad. 402: 32 M. L. J. 369 (P. C.) ... 547
Musgrave v. Drake, (1843) 5 Q. B. 185 : 13 L. J. Q. B. 16 : D. & M. 347 : 7 Jur. 1015 : 114 E R. 1218 ... 468
Muthar Sahib Maraikar v. Kadir Sahib Maraikar, 28 Mad. 544 : 15 M. L. J. 384 11, 80, 138, 180, 229, 230, 242, 338
Muthiah Chetty v. Kasivasi Somasundara, 10 M. L. T. 79 ... 70, 203
—— Karuppa Kaudan v. Rama Pillai, 3 M. H. C. R. 158 ... 597
Muthu Raman Chetty v. Chinna Villayan Chetty, 30 Mad. 965 : 30 M. L. J. 369 : 19 M. L. T. 278 : 3 L. W. 393 : (1916) 1 M. W. N. 290 : 33 I. C. 508 ... 328
Muthu Reddi v. Velu Asari, (1916) 2 M. W. N. 107 : 4 L. W. 34 : 35 I. C. 591 178, 271, 273, 274, 339

PAGE

Muthu Sastrigal v. Viswanatha Pandara Sannadhi, 38 Mad. 660 : 26 M. L. J. 19 : (1914) M. W. N. 48 : 21 I. C. 864 ... 28, 596
Muthukrishna Iyer v. Veeraraghava Iyer, 38 Mad. 297 : 23 M. L. J. 430 : 12 M. L. T. 315 : 16 I. C. 601 : (1912) M. W. N. 919 ... 64
Muthusami v. Somasundaram, 53 M. L. J. 814 : 39 M L. T. 387 : 105 I. C. 877 : (1927) Mad. 1018. ... 139, 142
Muttu Chetti v. Muttan Chetty, 4 Mad 296, 298 (F. B.) ... 35
Mutty Lal v. Choge Mul, 11 Cal. 344 ... 282
Mutty Lal Seal v. Lanecelot Dent, (1853) 5 M. I A. 328 : 18 E. R. 920 : 8 Moo. P. C. 319 : 1 Sar. 450 124, 221, 223, 238
Mutual Loan Association v. Sudlow, (1858) 5 C. B. N. S. 449 : 28 L. J. C. P. 108: 5 Jur. N. S. 338 : 141 E. R. 183 ... 184

N

Nachiappa Chetty v. Dakshinamurthi Servai, (1915) M. W. N. 217 : 17 M. L. T. 232 : 28 I. C. 345 ... 546
Nachimuthu v. Audiappa, (1917) M W. N 778 : 6 L. W. 630 : 42 I.C. 706 15, 17, 595, 596
Nagamma v. Tirumala, 12 L. W. 147 ... 595
Nagappa v Ah Foke, 56 I.C. 963: 12 Bur. L.T. 241 ... 260
——v. Ismail, 12 Mad. 192, 195 ... 567
——Chetty v. V. A A. R. Firm, 49 M.L.J. 306 : 22 L W. 12 : (1925) Mad. 1215: (1925) M.W.N. 484 : 91 I.C. 494 ... 598
Nagardas v. Moses Arokee, 12 I.C. 896 (L.B.) ... 167
Nageshar v. Bakridi, (1932) Oudh. 176: 90 O.W.N. 250 ... 566
Nagoor Meera v. Nainar, 4 Bur. L.J. 10: 90 I.C. 639 : (1925) Rang. 264 ... 545
Nalan Padmanathan v. Sait Badri Nath Sarda, 21 M. L. J. 425 : 9 M. L. T. 459: (1910) M.W.N. 371: 35 Mad. 582 ... 16
Nallaya Goundan v. Palani Goundan, (1926) M. W. N. 726: 98 I.C. 308: (A. I. R.) 1926 Mad. 1154 ... 258, 465
Namagiri v. Muthu Velappa, 56 M. L. J. 70 57, 61, 71, 84, 551
Namasivaya Goundan v. Kylasa Goundan, 7 M. H. C. R. 200 ... 259
Nambiar, K. P v. Sundarabai, 5 Bur. L. T. 47: 14 I.C 813 ... 63, 64
Namdev v. Swedeshi Vyapuri Mandali, 28 Bom. L. R. 944 ... 372
Namperumal v. Veeraperumal, 59 M. L. J. 596: 32 L. W. 768: 128 I.C. 689: (1931) M. W. N. 224: (1930) Mad. 956 ... 258
Nanak Ram v. Mehin Lal, 1 All. 487, 496 ... 237, 525
Nanakchand v. Bryan Erskine, 19 P.L.R. 1906: 9 P.R. 1906 ... 249
——v. Muhammad Afzal, 33 P. R. 1913: 279 P. W. R. 1912: 11 P. L. R. 1913: 16 I. C. 950 ... 594
——v Ram Sarup, 78 I. C. 169: 1924 Lah. 684 ... 29
Nanaksingh v. Kesh Das, 27 I.C. 608: 1 P. W. R. 1915: 34 P. L. R. 1915 ... 106
Nand Lal v. Firm Gulab Rai, 71 I. C. 610: (1923) All. 345 ... 277, 350

PAGE

——Ram v, Sitla Prasad, 5 All. 484: (1883) A. W. N. 62 ... 168, 185, 205
Nandan Misser v. Chaterbati, 13 B. L. R. (App.) 33 ... 28
Nandlal v. Akki, 6 Lah. 163: 89 I. C. 294: 26 P. L. R. 328: (1924) Lah. 394 ... 566
Nandu Bai v. Gau, 27 Bom. 150 ... 575
Nanhe v. Dawlatram, 2 I. C. 403 (All.) ... 142
Nanhey Mal v. Chet Ram, 41 All 40: 16 A. L. J. 899: 48 I. C 364 ... 316
Nanjundasami v. Kankaraju, 36 M. L. J. 242 ... 62
Naoroji v. Kazi Ziddick, 20 Bom. 636 ... 63
Napier v. Schneider, (1810) 12 East 420: 104 E. R. 164 ... 457
Naraindas, v. Abinash, 44 M L. J. 728, 731 (P. C.) ... 341
——v. Chandira, 107 I. C. 218: 22 S. L. R. 305 : (1928) Sind. 85 ... 39, 173, 555
——v. Nenu, (1929) Nag. 145: 25 N. L. R. 74: 116 I. C. 421 ... 189
Narasimha Murthi v Ramasami Chettiar 24 M. L. J. 91: 18 I C. 696: 13 M. L. T. 104: (1913) M. W. N. 336 ... 166, 186, 525
Narasimhulu v. Adiappa, 13 Mad. 252 ... 218
——v. Nagaramvaru, 41 M. L. J. 240 (1923) Mad. 434: (1923) M. W. N. 237 ... 48
Narayan v. Uttamma, 15 N L. J. 45 ... 60, 326
——Dutt v. Kirpa, 13 Lah. 515: (1932) Lah. 616: 33 P. L. R. 809 ...
Narayana Murthi v. Marimuthu, 26 Mad. 322 ... 184
——v. Umamaheswaran, (1930) Mad. 197: 122 I. C. 345 58, 59, 60, 229, 542
Narayanaswami Iyer, T. M. v. Rajaballi Khorsanjee, L. B. R. (1893-1900) 412 ... 255
Narayanasami Mudaliyar v. Lokambal Ammal, 23 Mad. 156 (note) 28
Nash v. De Freville, (1900) 2 Q. B. 72; 69 L. J. Q. B. 484: 82 L. T. 642: 48 W. R. 434: 16 T. L. R. 268. 249, 269, 274, 388
Nasibulla v. Kunwar Anand Singh. 42 All. 642 : 18 A. L. J. 831 : 57 I. C. 45 ... 140
Nasir Ali v. Kherchand, 36 I. C. 996 (All.) ... 166, 208, 462
Nataraja v. South Iadian Bank. 37 Mad. 51 : 22 M. L. J. 105 : 10 M. L. T 503 : 13 I. C. 91 : (1911) 2 M. W. N. 590 ... 82
——Naicken v. Ayyasami Pillai, 32 M. L. J. 354 : 5 L. W. 410 : 21 M. L. T. 405 : (1917) M. W. N. 230 : 38 I. C. 339 87, 128, 129, 234, 235, 531, 545, 546
Natarajulu Nayaker v. Subramania, 45 Mad. 778 : 16 L. W. 705 : (1922) M. W. N. 450 : 43 M. L. J. 695 : (1922) Mad. 181 ... 17, 258, 572
Natcheappa Cbetty v. Irrawady Flottilla Company, 41 Cal. 670 : 15 M. L. T. 193 : (1914) M. W. N 163 : 18 C. W. N. 457 : 19 C. L. J. 265 : 16 Bom. L. R. 298 : 12 A. L. J. 211 : 7 Bur. L. T. 40 : 22 I. C. 311 (P. C.) ... 12, 13
Natesa Aiyar v. Sattya Pillai, 8 L. W. 622 : 51 I. C. 386 ... 138
Nathabai v. Ramchod Lal, 39 Bom. 32 : 20 Bom. L. R. 696 : 27 I. L. 965 : ... 191
Nathan v. Ogdens, (1905) 93 L. T. 553 : 21 T. L. R. 775 : 49 Sol. So. 725 : affirmed in 94 L. T. 126 (C. A.) ... 43

PAGE

Nathoobai v. Himatlal. 23 Bom. L. R. 1231 : (1921) Bom. 336 ... 43
Nathusa v. Phulchandsa, 8 N. L. R. 7 : 14 I. C. 399 ... 535, 595
National Bank v. Silke, (1891) 1 Q. B. 435 : 60 L. J. Q. B. 199 :
63 L. T. 787 : 39 W. R. 361 : 7. T. L. R. 156 ... 78, 236, 476
——Park Bank of New York v. Berggren, 110 L. T. 907 :
30 T. L. R. 387 : 19 Com. Cas. 234 ... 70
——Savings Bank v. Tranah, (1867) L. R. 2 C. P 556 :
36 L. J. C. P. 260 : 16 L. T. 592 : 15 W. R. 1015 ... 537
——Bank of Upper India v. Ban Sidhar, 92 I. C. 94 :
3 O. W. N. N. 83 : (1926) Oudh. 248, on appeal, 57 I. A. 1 :
34 C. W. N. 145, (1929). P. C. 297 : 6 O. W. N 1136 :
31 L. W. 1 : 32 Bom. L. R. 136 : (1930) M. W. N. 1 :
5 Luck 1 : 51 C. L. J. 56 : 121 I C. 193 144, 185, 206, 210
——Sales Corporation v. Bernardi, (1931) 2 K. B. 188:
(1931) W. N. 100: 145 L. T. 48: 47 T. L. R. 380:
100 L. J. (K. B.) 386: 36 Com. Cas. 270 31, 86, 97, 243, 527
Nazir Khan v. Ram Mohan, (1931) All. 183 : 53 All. 114: (1931) A. L. J. 64 :
133 I. C. 307 ... 17, 595, 596
Neal v. Erving, (1793) 1 Esp. 61: 5 R R. 720 ... 124, 127
Neale v. Turton, (1827) 4 Bing. 149, 151 : 5 L. J. (O. S.) C.P. 133:
12 Moore C.P. 365: 29 R.R. 531 : 130 E. R. 725 ... 387, 388
Neil, *In re*, Burden, *Ex parte*, (1881) 16 Ch. D. 675: 44 L. T. 525:
29 W. R. 879 ... 566
Nelson v. Bridport, (1848) 8 Beav. 547: 10 Jur. 1043: 50 E. R. 215... 512
——v. Dahl, 12 Ch. D. 568 ... 19
Nethri v. Mullapillai Gopalan, 39 Mad. 597 ... 33
New Fleming Spinning and Weaving Co. Ltd., *In re*, 3 Bom. 439,
449: 4 Bom. 275, 277 ... 119, 169
——v. Kessowji Naik, 9 Bom. 373, 411 ... 24
New London Credit Syndicate Ltd. v. Neale, (1898) 2 Q. B. 487, 496:
67 L. J. Q. B. 825: 79 L.T. 323 ... 220, 221, 524
Newington v. Levy, 6 C.P. 180. 191 : 40 L.J.C.P. 29 : 23 L. T. 594 :
19 W. R. 473 ... 531
Nicholas Edward Kelly v. Mary Hanlon, 10 B. L. R. App. 23 ... 116
Nicholls v. Diamond, (1853) 9 Ex. 154 : 2 W. R. 12 :
96 R. R. 631 : 156 E. R. 66 ... 55, 170, 171
Nicholson v. Revill, (1836) 4 A. & E. 675 : 5 L. J. K. B. 129:
6 N. & M. 192: H. & W. 756: 43 R. R. 460. 111 E. R. 941 ... 188, 347, 376
——v. Ricketts, (1860) 29 L. J. Q. B. 55: 2 E. & E. 497:
6 Jur. (N. S.) 422 : 1 L. T. 544 : 8 W. R. 211 : 121 E. R. 187... 128
——Bank v. Rajagopala, 5 L. W. 514: 38 I. C. 302 ... 566, 567
Nihal Chand v. Ali Baksh, 9 P. R. 1907 ... 230
Nilkund Anantapa v. Menshi Apuraya, 10 Bom. 346 ... 278
Ningawa v. Bharmappa, (1897) 23 Bom. 63, 66 ... 558
Niranjan v. Gajadhar, 30 All. 133: 28 A. W. N. 45: 5 A. L. J. 71... 566

PAGE

Nirmal Chunder Bandopadhya v. Sharatmoni Debya, 25 Cal. 911: 2 C. W. N. 642 ... 31
Nirode Basini v. Sital Chandra, (1930) Cal. 577: 51 C. L. J. 569 ... 597
Nobodip v. Ramkrishna, 14 Cal. 397 ... 566
Norendra Nath v. Kamal, 23 Cal. 563 : 23 I. A. 18 ... 11
Norfolk v. Howard, (1682) 2 Show. 235 : 89 E. R. 910 ... 301
Norman v. Ricketts, (1886) 3 T. L. R. 182 ... 218
Norris v. Aylett, (1809) 2 Camp. 329 ... 539
——v. Solomon, (1840) 2 Moo. & Rob. 266 ... 45
North Stafford Shire Loan Co. v. Wythies, (1861) 2 F. & F. 563 ... 411
North and South Wales Bank v. Macbeth, (1908) 1 K. B. 13 : affirmed (1908) A. C. 137 : 77 L. J. K. B. 464 : 98 L. T. 470 : 13 Com. Cas. 219 : 24 T. L. R. 397 : 52 Sol. Jo. 353 ... 198, 223
Norton v. Ellam, (1837) 2 M. & W. 461 : 6 L. J. Ex. 121 : 1 Jur. 433: 1 M. & H. 69 : 46 R. R. 646 : 150 E. R. 839 ... 93, 291
——v. Seyamour, (1847) 3 C. B. 792 : 16 L. J. C. P. 100: 11 Jur. 312 : 71 R. R. 495 : 136 E. R. 317 ... 133
——v. Yates, (1906) 1 K. B. 112 : 75 L. J. K. B. 252 : 54 W. R. 183... 163
Novelle v. Rossi, (1831) 2 B & Ad. 757 : 9 L. J. (O. S.) K. B. 307 : 36 R. R. 736 : 109 E. R. 1326 ... 323, 343
Nundun Misser v. Mt. Chittur Butta, 21 W. R. 446 : 13 B. L. R. (App.) 33 ... 28
Nurdin v. Alla Ditta, (1932) Lah. 419 : 138 I. C. 305 ... 189, 191
Nusserwanji v. Laxman, 30 Bom. 452 : 17 M. L. J. 405 ... 335
Nursey Spinning and Weaving Co., *In re*, 5 Bom. 92 ... 119

O

Oakely v. Pasheller, (1836) 4 Cl. & F. 207 : 10 Bligh (N.S.) 548 : 6 E. R. 202 ... 186, 192
Odell v. Cormack, (1887) 19 Q. B. D. 223 ... 55, 174
Official Assignee of Madras v. Palaniappa, 41 Mad. 824 : 35 M. L. J. 473 : 24 M. L. T. 216 : 8 L. W. 530 : 49 I. C. 220 : (1918) M. W. N. 721 ... 546
——v Lupprian, 34 Mad. 121, 125, 128 ; 8 M. L. T. 101 : 6 I. C. 387 : 155
——v. Rajam Iyar, 33 Mad. 299 : 8 I. C. 138 ... 25
——v. Ramachandra Iyer, 33 Mad. 134, 141 : 7 M. L. T. 214 : 5 I. C. 974 ... 155
Official Receiver v. Naraindas, (1926) Sind 31 ... 39, 173
Ogden v. Benas, (1874) L. R. 9 C. P. 513 : 43 L. J. C. P. 259 : 30 L. T. 683 : 22 W. R. 805 ... 332, 481, 495
——v. Ogden, (1908) P. 46 : 77 L. J. P. C. P. 34 : 97 L. T. 827 : 24 T. L. R. 94 (C. A.) ... 502
Ogilvie v. West Australian Mortgage and Agency Corporation, (1896) A. C. 257 : 65 L. J. P. C. 46 : 74 L. T. 201 ... 166, 264, 363

PAGE

Omrao Begum v. Government of India, 9 Cal. 704 : 12 C. L. R. 595 : 10 I. A. 39 (P. C.) ... 10
Oodey Chand Boodaji v. Basker Jagannath, 6 Bom. 371 ... 375
Oolagappa Chetty v. D. Arbuthnot, 7 Mad. Jur. 190 : 14 B. L. R. 115 : 21 W. R. 358 : 5 M H. C. R : 303 : 1 I. A. 268 (P. C.) ... 10
Ord v. Portal, (1812) 3 Camp. 239 ... 249
Oridge v. Sherborne, (1843) 11 M. & W. 374 : 12 L. J. Ex. 313 : 7 Jur. 402 : 152 E. R. 849 ... 47, 103, 295
Oriental Bank Corporation Ltd. v. The Baree Tea Co. Ld., 9 Cal. 880 : 13 C. L. R. 412 ... 125
——Ltd. v. John Fleming. 3 Bom. 242 ... 255
Ose Gesellschaft v. Jewish Colonial Trust, (1927) 43 T. L. R. 398 363
Osman Shaha v. Muhomed Amar Sirkar, 9 I. C. 22 ... 566
Osmond Beeby v. Khitish Chandra, 41 Cal. 771 : 18 C. W. N. 631 : 21 I. C. 284 ... 65
Oudh Commercial Bank v. Gurdin, 59 I. C. 604 : 23 O. C. 364 ... 286, 290
——v. Thakurdin, 59 I. C. 604 ... 316
Outhwaite v. Luntley, (1815) 4 Camp. 179 : 16 R. R. 771 ... 373
Overend Gurney & Co., *In re, Ex parte* Swan, (1868) L.R. 6 Eq. 344 : 18 L. T. 330 : 16 W. R. 560 266, 273, 446, 449, 451, 452
——v. Oriental Financial Corporation, (1874) L. R. 7 H. L. C. 348 : 31 L. T. 322 affirming (1871) 7 Ch. App. 142 187, 189, 192, 347, 387
Owen v. Van Uster, (1850) 10 C. B. 318 : 20 L. J. C. P. 61 : 84 R. R. 582 : 138 E. R. 128 ... 55, 171
——v. Waters, (1836) 2 M. & W. 91 : 6 L. J. Ex. 13 : 5 D. P. C. 324 ... 102

P

P. R. & Co. v. Bhaghavandas, 34 Bom. 192 : 11 Bom. L. R. 335 : 2 I. C. 475 ... 11
P. R. M. P. R. Chettyar v. Muniyandi, 10 Rang. 257 : (1932) Rang. 97 ... 236, 240
Pachkauri v. Mulchand, 44 All. 554 : 20 A. L. J. 437 : 66 I. C. 503 : (1922) All. 279 ... 319
Padma Lochan v. Girish Chandra, 46 Cal. 168 : 26 C. L. J. 392 : 45 I. C. 241 ... 569
Paine v. Beran, (1914) 110 L. T. 933 : 30 T. L. R. 395 ... 99
Palaniappa v. Arunachala, 23 M. L. J. 595 ... 122
——v. Rajagopala, (1928) M. W. N. 425 : 111 I. C. 407 : (1928) Mad. 773 ... 462
——Chetti v. Arunachallam Chetty, 21 M. L. J. 432 : 9 M. L. T. 482 : (1911) 2 M. W. N. 318 : 10 I. C. 118 516, 533, 534
——v. Peria Karuppan Chetti, 17 Mad. 262 ... 503, 507
——v. Shanmugam Chetty, 41 Mad. 815 : 8 L. W. 317 : 48 I. C. 23 : 35 M. L. J. 90 ... 128, 132, 143
Palavan v. Kanee, 66 I. C. 501 : A. I. R. 1921 L. B. 92 ... 80, 230

PAGE

Palmer v. Bramley, (1895) 2 Q. B. 405 : 65 L. J. Q. B. 42 : 73 L. T. 329 ... 538
——v. Pratt, (1824) 2 Bing. 185 : 3 L. J. (O. S.) C. P. 250 : 9 Moore C. P. 358 : 27 R. R. 583 : 130 E. R. 277 ... 42, 43
Pancham v. Ansar Husain, 31 C. W. N. 324 : 99 I. C. 650 ... 565
——Roy v. Emperor, (1929) Cal. 723 ... 603
Panchanand v. Tavamdri, 12 Cal. 64 ... 598
Pandurang v. Mahadaji, 27 Bom. 23 : 4 Bom. L. R. 714 ... 567
——v. Maruthi, 30 Bom. L. R. 688 : III I. C. 617 ... 604
Panioty, J. C. v. Dwarka Mohun Das, 4 C. L. R. 145, 147 .. 185
Panna Lal v. Hargobind, 51 I. C. 250 : (Lah) : 29 P. R. 1919 21, 53, 55, 229, 230
Panni Chand v. Nanoo Sankar Tawker, 18 M. L. J. 456 : 4 M. L. T. 107 ... 258
Paramasivam Pillai v. Sankaraya, 9 M. L. T. 94 : 8 I. C. 352 ... 27
Parbhubbai v. Bai Lalita, (1923) Bom. 304 ... 113, 132
Parchim, The, (1918) A. C. 157 ... 511
Parfitt v. Chainsekh, 144 P. R. 1906 ... 80
Parker v. Gordon, (1806) 7 East 385 : 3 Smith 358 : 6 Esp. 41 : 8 R. R. 646 : 103 E. R. 149 ... 293
——v. Leigh, (1817) 2 Stark. 228 : 171 E. R. 629 ... 345, 349
Parkin v. Moon, (1836) 7 C & P. 408 ... 465
Parmanand v. Gokal Chand, 7 Lah. 113 : (1926) Lah. 328 : 92 I. C. 1015 : 27 P. L. R. 75 : 8 Lah. L. J. 3 ... 533
Parr v. Jewell, (1855) 16 C. P. 684 : 100 R. R. 884 : 139 E. R. 928 ... 205, 273
Parsotam Narain v. Taley Singh, 26 All. 178 : (1903) A. W. N. 217 596
Partridge v. Bank of England, (1846) 9 Q. B. 396 : 15 L. J. Q. B. 395 : 8 L. T. O. S. 195 : 10 Jur. 1031 : 115 E. R. 1324 ... 12
Pasmore v. North, (1811) 13 East 517 : 12 R. R. 420 : 104 E. R. 471 465
Pasupathy Iyer v. Raman Chetty, (1915) M. W. N. 227 : 28 I. C. 501 ... 180, 239, 541
Patience v. Townley, (1805) 2 Smith 223 : 8 R. R. 711 ... 307, 320
Patoju Sangayya v. Patoju Sanyasi, 23 I. C. 545 ... 60, 236, 326
Paton v. Winter, (1809) 1 Taunt. 420 : 127 E. R. 896 ... 368
Pattat Ambadi Marar v. Krishnan, 11 Mad. 290 ... 230
Patterson, *Re* (1864) 33 L. J. Ch. 596 : 4 De. G. J. & S. 422 : 10 L. T. 801 : 12 W. R. 941 : 46 E. R. 982 ... 83
Paul v. Joel, (1859) H. & N. 355 : 28 L. J. Ex. 143 : 5 Jur. N. S. 603 : 7 W. R. 287 : 118 R. R. 491 ... 404
——Beier v. Chotalal Javerdas, 30 Bom. 1 : 6 Bom. L. R. 948 ... 92
Peacock v. Pursell, (1863) 32 L. J. C. P. 266 : 14 C. B. N. S. 728 : 10 Jur. (N. S.) 178 : 8 L. T. 636 : 11 W. R. 834 : 243 E. R. 630 64, 290, 535, 537, 538
——v. Rhodes, (1781) 2 Doug. 633 : 99 E. R. 402 ... 87, 248
Pearce v. Davis, (1834) 1 Moo. & R. 365 ... 50, 159
Pearl v. Deacon, (1857) 24 Beav 186 : on appeal 1 De. G. & J. 461 : 26 L. J. Ch. 761 : 29 L. T. O. S. 338 : 3 Jur. N. S. 1187 : 5 W. R. 793 : 44 E. R. 802 ... 196

PAGE

Pearson v. Crallan, (1805) 2 Smith (K. B.) 404 ... 402
——v. Garrett, (1693) 4 Mod. 242 : Comb. 227 : 87 E. R. 371 ... 42
Peary Lal v. Sukhan Ram, 93 I. C. 960 ... 596
Pease v. Hirst, (1829) 10 B. & C. 122 : 8 L. J. (O. S.) K. B. 94 : 5 Man. & R. 88 : 34 R. R. 343 : 109 E. R. 396 ... 62
Peizer v. Lefkowitz, (1912) 2 K. B. 235, 243 ... 372
Pelkington v. Green, 2 Bos. & P. 151 ... 63
Pennington v. Crossley, (1873) L. R. 9 Ch. App. 27 : 77 L. T. 43 (C. A.) ... 218
Penny v. Inness, (1834) 1 Cr. M. & R. 439 : 4 L. J. Ex. 12 : 5 Tyr. 107 : 40 R. R. 629 : 149 E. R. 1152 ... 177
Pentaya v. Kesho Rayo, 56 I C. 249 : 16 N. L. R. 68 ... 337
People's Bank of India v. Abdul Karim, 18 P. R. 1912 : 65 P. W. R. 1912 : 75 P. L. R. 1912 : 14 I. C. 512 ... 535, 584
Percival v. Frampton, (1835) 2 Cr. M. & R. 180 : 3 Dowl. 748 : 5 Tyr. 579 : 4 L. J. Ex. 139 : 150 E. R. 78 ... 462
Periannan Chetti v. Kudupoody Mallayya, 10 L. B. R. 4 : 51 I. C. 577 ... 329, 348, 534
Periya Miyana Maraikayar v. Subramania Aiyer, 46 M. L. J. 255 : 19 L. W. 342 : (1924 M. W. N. 240 : 78 I. C. 505 ... 556
Peri Ramasami v. Chandro Kottayya, 47 M. L. J. 840 ... 327, 347
Perlak Petroleum & Co. v. Deen, (1924) 1 K. B. 111 (C. A.) (1923) W. N. 270 : 68 S. J. 81 : 93 L. J. (K. B. 158) 130 L. T. 234 ... 512
Perring v. Hone, (1826) 4 Bing. 28 : 12 Moore C. P. 135 : 2 C. & P. 401 : 130 E. R. 628 ... 133, 376, 380
Perry v. National Provincial Bank of England, (1910) 1 Ch. 464 : 79 L. J. Ch. 509 : 102 L. T. 300 : 54 S. J. 233 (C. A.) ... 175, 188, 196
Pertap Chunder v. Mohendro Nath, 17 Cal. 291, 296 : 16 I. A. 233 : 5 Sar. 444 (P. C.) ... 316
Perumal v. Perumal, 44 Mad. 196 : 40 M. L. J. 25 : 13 L. W. 69 : (1921) M. W. N. 5 : (1921) Mad. 137 : 61 I. C. 461 ... 80, 82
Perundevithayar v. Nammalvar, 18 Mad. 390 : 5 M. L. J. 203 ... 25
Peruvian Rys. Co. v. Thames & Mersey Marine Insurance Co., (1867) L. R. 2 Ch. App. 617 : 36 L. J. Ch. 864 : 15 W. R. 1002 : 16 L. T. 644 ... 118
Pestonjee v. Mirza, 3 Cal. 541 ... 549
——Nesserwanjee Bottlewalah v. Gool Mohomed Sahib, 7 M. H. C. R. 369 ... 123
Pestonji v. Bai Meherbai, 30 Bom. L. R. 1407 : (1928) Bom. 539 : 112 I. C. 740 ... 146
——& Co. v. Cox & Co, 52 Bom. 589 : 55 I A. 353 : (1928) P. C. 231 : 30 Bom. L. R. 1503 : 26 A. L. J. 1245 : (1928) M. W. N. 881 : 49 C. L. J. 32 : 113 I. C. 124 : (P. C.) 346, 372, 373, 374
——Shapurji v. Jamsedji Nowroji, 50 Bom. 262 : 28 Bom. L R. 138 : 94 I. C. 9 : (1926) Bom. 250 ... 570
Pesussumal v. Girgam Mayal, (1921) Sind 72 : 15 S. L. R. 34 ... 465

PAGE

Pethu v. Chidambara, (1931) M. W. N. 390 : 131 I. C. 1 : (1931) Mad. 533 ... 472, 545
Petit v. Benson, (1697) Comberb. 452 : 90 E. R. 586 ... 380
Peto v. Reynolds, (1854) 9 Exch. 410 : 23 L.J. Ex. 98 : 2 C.L.R. 491 : 18 Jur. 472 : 2 W. R. 196 : 96 R. R. 772 : 156 E. R. 175 ... 45, 55, 89
Petty v. Cooke, (1871) L. R. 6 Q. B. 790, 794 : 40 L. J. Q. B. 281 : 25 L. T. 90 : 19 W. R. 1112 ... 539
Pfiel v. Vanbatenbreg, (1810) 2 Camp. 439 ... 386
Philips v. Astling, (1809) 2 Taunt. 206 : 11 R.R. 547 : 127 E.R. 1086 ... 305, 322, 393
——v. Eyre, (1870) L. R. 6 Q. B. 1, 28 ; 10 B & S. 1004 : 40 L. J. Q. B 28 : 22 L. T. 869 : (Ex. Ch.) ... 507
——v. Gould, (1848) 8 C. & P. 355 ... 401
——v. Im Thurn, (1866) L. R. 1 C. P. 463, 467, 471 : 35 L. J. C. P. 220 : 14 L. T. 406 : 14 W. R. 653 (1865) 18 C. B. N. S. 694 ... 445, 471
Philpot v. Bryant, (1827) 3 C. & P. 244 : 4 Bing. 717 : 6 L. J. (O. S.) C. P. 182 : 1 M. & P. 754 : 29 R R. 710 ... 277, 305, 320
Phipps v. Tanner (1833) 5 C. & P. 488 ... 35, 93
Phipson v. Kneller, (1815) 4 Camp. 285 : 1 Stark. 116 ... 411
Phoenix Trading Co. v. Diwan Chand, (1929) Sind 172 : 117 I. C. 160 ... 126, 559
Phul Chand v. Ganga Ghulam, 21 All. 450 : (1899) A. W. N. 157 ... 290
Picker v. London & County Banking Co., (1887) 18 Q. B. D. 515 : 57 L. J. Q. B 299 : 35 W. R. 469 : 3 T. L. R. 444 ... 12, 76
Pickin v. Graham, (1833) 1 Cr. & M. 725, 727 : 2 L. J. Ex. 253 : 3 Tyr. 923 : 38 R. R. 738 : 149 E. R. 591 ... 313, 411, 416
Pierce v. Fothergill, (1835) 2 Bing. N. C. 167 : 2 Scott. 334 : 1 Hodges 251 : 132 E. R, 66 ... 291, 337
Pierson v. Hutchinson, (1809) 2 Camp. 211 : 6 Esp. 126 : 170 E. R. 214
Pigou v. Ramkishen, 2 W. R. 301 ... 20, 137
Pigue v. Golab Ram, (1864) 1 W. R. 75 ... 392, 398
——v. Ram Jushant, T. M., 1 W. R. 95 ... 151, 184
Pike v. Street, (1828) 1 M. & M. 226 : Dans. & Ll. 159 ... 527
Pinard v. Klockman, (1863) 32 L. J. Q. B. 82 : 3 B. & S. 388 : 9 Jur. (N. S.) 599 . 7 L. T. 625 : 11 W. R. 260 : 122 E. R. 147 ... 499
Pitt v. Chappelow, (1841) 8 M. & W. 616 : 151 E. R. 1185 : 20 L. J. Ex. 487 ... 116
——v. Pitt, (1864) 4 Macq. 627, 649 ... 502
Plimely v. Westley, (1835) 2 Bing. N. C. 249 : 5 L. J. C. P. 51 : 2 Scott 423 : 1 Hodges. 324 : 42 R. R 614 : 132 E. R. 98 ... 177, 415, 538
Po Htin v. Saw Hla, (1930) Rang. 243 : 129 I. C 526 ... 54
Pogose v. Bank of Bengal, 3 Cal. 174, 184. 169, 174, 182, 184, 190, 193, 199
Poirier v Morris, (1853) 2 E. & B. 89 : 22 L. J. Q. B. 313 : 17 Jur. 1116 : 1 W. R. 349 : 95 R. R. 449 : 118 E. R. 702 ... 62, 79
Polhill v. Walter, (1832) 3 B. & Ad. 114 : 1 L. J. K B. 92 : 37 R. R. 344 : 110 E. R. 43. 55, 134, 135, 144, 162

PAGE

Pollard v. Herries, (1803) 3 Bos. & P. 335 : 127 E. R. 183 ... 291
Ponnambala v. Vasudeva, 56 I. C. 616 ... 259
Ponnayya v. Palaniappa Chetti, 7 M. L. T. 271 : 5 I.C. 435. 60, 179, 239, 327, 541
Ponnuswami v. Damodar, 47 Mad. 403 : 19 L. W. 168 : 34 M. L. T. (H. C.) 7 : (1924) M. W N. 178 : 79 I. C. 800 : (1924) Mad. 464 : 46 M. L. J. 82 ... 217, 549
——v. Palayathan, 10 L. W. 202 ... 259
——v. Vellore Commercial Bank, 38 M. L. J. 70 : 27 M. L. T. 81 : (1920) M. W. N. 75 : 11 L. W. 28 : 56 I. C. 384 ... 526, 529, 532, 562
Pooley v. Brown, (1862) 31 L. J. C. P. 134 : 11 C. B. N. S. 565 : 8 Jur. N. S. 938 : 5 L. T. 750 : 10 W. R. 345 : 142 E. R. 917 ... 226
——v. Harradine, (1857) 7 E. & B. 431 : 26 L. J. Q. B. 156 : 3 Jur. (N. S.) 488, 5 W. R. 405 : 110 R. R. 666 : 119 E. R. 1307 ... 191
Poona Chitrashala Press v. Gajanan, 24 Bom. L. R. 355 : 67 I. C. 941 ... 119
Porthouse v. Parker, (1807) 1 Camp. 82 : 10 R. R. 637 ... 414
Pothi Reddi v. Velayuda Sivan, 10 Mad. 94 ... 596
Pott v. Clegg, (1847) 16 M & W. 321 : 16 L. J. Ex. 210 : 73 R. R. 517 : 153 E. R. 1212 ... 50, 154, 159
Potter v. Brown, (1804) 5 East. 124 : 1 Smith 351 : 7 R. R. 633 : 102 E. R. 1016 ... 507
——v. Rayworth, (1811) 13 East 417 : 104 E. R. 432 ... 312
Potts v. Reed, (1806) 6 Esp. 57 : 9 R. R. 808 ... 239
Powell v. Hellickar, (1858) 26 Beav. 261 : 28 L. J. Ch. 355 : 5 Jur. (N. S.) 232 : 7 W. R. 171 ... 218
Powszechny Bank v. Paros, (1932) 2 K. B. 353 : (1932) W. N. 121 ... 556
Pragdas v. Dowlatram, 11 Bom. 257, 270 ... 217
Pramatha v. Sheik Abdul, 27 C. W. N. 430 : 37 C. L. J. 406 ... 260
——Nath v. Dwarka Nath, 23 Cal. 851 ... 596
Pratapchand Gulabchand v. Purshotamdas Malji, 18 Bom. L. R. 124 : 33 I. C. 336 ... 34, 593
Prange *Exparte, Re* Leeds Banking Co. (1865) L. R. 1 Eq. 1, 5 : 35 L. J. Ch. 33 : 11 Jur. (N. S.) 920 : 13 L. T. 314 : 14 W. R. 43 ... 397, 399, 401
Prehn v. Royal Bank of Liverpool, (1870) L. R. 5 Ex. 92 : 39 L. J. Ex. 41 : 21 L. T. 830 : 18 W. R. 463 ... 154, 164
Prem Lall v. Radha Bullav, 58 Cal. 290 : 34 C. W. N. 779 ... 336, 337
Premabai Hemabai v. T. H. Brown, 10 Bom. H. C. R. 319 ... 124, 130, 134
Premier Industrial Bank, Ltd. v. Carlton & Co., (1909) 1 K.B. 106 : 78 L. J. K. B. 103 : 99 L. T. 810 : 16 Manson 22 ... 117, 119
Premji v. Dossa, 10 Bom. 358 ... 131
Prescott v. Flinn, (1813) 9 Bing. 19 : 1 L. J. C. P. 145 : 2 Moo. & S. 18 : 18 R. R. 508 : 131 E. R. 521 ... 124, 125
Preston v. Jackson, (1817) 2 Stark. 237 ... 539
Prevott v. Abbot, (1814) 5 Taunt. 786 : 128 E. R. 901 ... 90
Price v. Browne, 14 Mad. 420 : 423 : 1 M. L. J. 540 ... 19
——v Mitchell, (1815) 4 Camp. 200 ... 298

PAGE

Price v. Neal, (1762) 3 Burrow 1 354 96 E. R. 221 ... 29
——v. Price. (1847) 16 M. & W. 232. 16 L. J. Ex. 99 : 4 D. & L. 537 ; 73 R. R. 476 : 153 E. R. 1174 ... 537
Prideaux v. Collier, (1817) 2 Stark. 57 279, 287, 314, 412
——v. Criddle, (1869) L. R. 4 Q. B. 455 : 38 L. J. Q. B. 232 : 10 B. & S. 515 : 20 L. T. 695 ... 433
Prince v. Oriental Bank Corporation, (1878) 3 A. C. 325 : 47 L. J. C. P. 42: 38 L. T. 41 : 26 W. R. 543 157, 160, 323, 343
Pringle v. Jafar Khan, 5 All. 443: (1883) A. W. N. 259 ... 260
Pritchard v. Couch, (1913) 57 Sol. J. 342 ... 282
Probatchandra v. Moheshchandra, 58 Cal. 615 ...
Prosunno Nath Lahiree v. Tripoora Soonduree Dabee, 24 W. R. 88 ... 571
Powszechny Bank v. Paros, (1932) 2 K. B. 353 : (1932) W. N. 121 ...
Protab Chunder Dass v. Gour Chunder Roy, 4 Cal. 132 : on appeal, 6 Cal. 241 ... 190
Pulugurta Somaraju v. Venkata, 20 L. W. 913 ... 571
Punchanan v. Daly. 15 B. L. R. 331 ... 186, 190
Punjab Industrial Agency Ltd. v. Mercantile Bank of India, (1930) Lah. 852: 31 Punj. L. R. 369: 127 I. C. 223 : 11 Lah 667 ... 161, 330, 331
——National Bank v. Balkishan, 6 Lah. L. J. 230: 79 I C. 461 ... 172, 220
——v. Mercantile Bank of India Ltd., 236 Bom. 455 : 13 Bom L. R. 835 ... 95, 363
——v. Tajmal, 25 A. L. J. 102: 49 All. 257: 100 I. C. 341 : (1927) All. 236 ... 516, 533, 536
Purmanand v. Ruttonji, 24 Bom. 65 ... 11

Q

Quazie Mahmudar Rohman v. Sarat Chandra Dutt, 5 C. W. N. 259. 537
Queen v. Gulam Hussain, 7 Mad. 71 ... 555
Queen-Empress v. Indarjit, 11 All. 262: 9 A. W. N. 85 ... 10
——v. Muttirulandi, 11 Mad. 329 ... 579
——v. Nihal Chand, 20 All. 440 ... 576
——v. Somasunderam Chetty, 23 Mad. 155 ... 578

R

R. v. Elliot, (1777) 1 Leach 210 : 2 East P. C. 951 ... 92
——v. Kinnear, (1838) 2 Moo. & R. 117 ... 264
——v. Post, (1806) R. & R. 161 : Bayley, Bills 6th Edn. 12 ... 93
R. D. Sethna v. Grace, 38 Bom. 618 : 16 Bur. L. R. 534 ... 12
Rabey v. Gilbert, (1861) 30 L. J. Ex. 170 : 6 H. & N. 536 : 9 W. R. 386 : 3 L. T. 751 : 158 E. R. 220 312, 315, 411, 415
Rabindra Nath Dutt v. Adbul Abadi & Co., 52 Cal. 954 ...

PAGE

Radh Bihari v. Alexander, 2 Lah. 385 ... 222
Radha Gobind Shaha v. Chunder Nath Das Shaha, 6 W. R. 301 ... 398
——Prasad v. Bhagwan Rai, 5 All. 289, 293 : (1883) A. W. N. 33 ... 567
Radhabai v. Nathu Ram, 13 All. 66 : (1890) A. W. N. 238 ... 577
Radhakant v. Abboy Churn, 8 Cal. 721 : 11 C. L. R. 310 ... 577, 582
Radhakisan v. Mancherdar, 14 N. L. J. 5 ... 32, 132
Radhakisen v. Hiralal, 58 I. C. 313 ... 46, 89, 90
——v. Sital Persad, 94 I. C. 465 (All.) ... 260
Radhakrishna v. Subbaraya, 40 Mad. 550 : 31 M. L. J. 357 : 4 L. W. 255 34 I. C. 849 ... 32
Raebura & Co., *In Re.*, 47 I. C. 561 ... 575
Raghavachariar v. Srinivasa Raghava Chariar, 31 M. L. J. 575 : 20 M. L. T. 407 : (1916) 2 M. W. N. 363 : 40 Mad. 308 (F. B.) ... 112
Raghavendra v. Mahipat, 49 Bom. 202 : 27 Bom. L. R. 178 : 85 I. C. 883 : (1925) Bom. 244 ... 189
Raghavji Vijpal v. Narandas Parmanandas, 8 Bom. L. R. 921 ... 69
Raghoji v. Abdul Karim, 1 Bom. 590 : (1877) P. J. 74 ... 62
Raghoonath v. Gobind, 22 Cal. 451 ... 39, 172, 549
Raghubar v. Nanak Chand, (1927) Oudh 528 : 4. O. W. N. 999 : 105 I C. 421 ... 545, 546
Raghunath v. Imperial Bank of India, 50 Bom. 49 : 27 Bom. L. R. 1229 ... 331
——v. Radhakishan, (1929) Lah. 634 : 119 I. C. 759 ... 325, 349
Raghunath v. Sri Narain, 45 All. 434 : (1923) All. 424 : 73 I. C. 1018 ... 546
Raghunathachari v. Aravamuthiyengar, 34 I. C. 617 ... 464
Raghunathji Tarachand v. The Bank of Bombay, 34 Bom. 72 : 11 Bom. L. R 255 : 2 I. C. 173. 11, 14, 131, 234, 546
Rahmat Ali v. Deva Singh, 4 Lah. 451 ... 535
Rahmatullah v. Ganesh Das, 82 P. R. 1891 ... 534
Rai Bahadur Sahu Lalta Prasad v. Charles Campbell, M. Leod, 9 C. W. N. 841 ... 75
Raja Jotiprasad v. Chota Nagpur Banking Association, 8 Pat. 413 : 10 P. L. T. 73 : 115 I. C. 558 : (1929) Pat. 193 ... 157
——of Ramnad v. Secretary of State for India, 52 Mad. 12 : 114 I. C. 829 : (1929) Mad. 179 ... 316, 332
Rajindra v. Tekchand, (1923) Lah. 628 ... 595
——Narain v. Bijai Govind, 2 M. I A. 253 ... 333
Rajroopram v. Buddoo, (1883) 1 Hyde 155 : 1 Ind. Jur. 93 ... 19, 80
Rakkappa v. Suppiah, (1930) Mad. 485: 124 I. C. 53 : 32 L. W. 691 ... 596
Rakhal v. Ramachandra, (1921) Pat. 292 ... 596
——v. Dennistoun, (1851) 6 Ex. 483: 20 L J. Ex 278 : 155 E. R. 634 ... 343
Ram Bahadur v. Dusari Ram, 17 C. L. J. 399 ... 595
——Ballab Rhirka Wala v. Bickraj, 6 Bur. L. T. 81: 19 I. C. 88: 6 L. B. R. 174 60, 116, 541, 543

PAGE

Ram Bujahwan Prasad v. Ram Narain, 2 Pat. L. T. 396 ... 546
——Chander v. Rawatmuli, 19 C. W. N. 1172: 31 I. C. 672 ... 567
——Das v. Lal Chand, 28 Punj. L. R. 68: (1927) Lah. 137: 107 I. C. 325 ... 468
——Dayal v. Lalta, 47 I. C. 683 ... 550
——Gopal v. Dhirendra, 54 Cal. 380: 31 C. W, N. 397 : (1927) Cal. 376 : 101 I. C. 573. 234, 236, 530, 545, 546
——Jas. v. Shahabuddin, (1927) Lah. 89: 95 I. C. 704 ... 82, 596
——Lal v. Chauni Lal, (1932) Bom. 163: 34 Bom. L. R. 252 ... 556
——v. Kashichorren, 26 A. L. J. 241: 108 I. C. 147 : (1928) All. 380. 464
—— Prasad v. Shrinivas, 27 Bom. L R. 1122 : 90 I. C. 685 : (1925) Bom. 527 ... 112, 583
——Raghubir v. Jafar Mirza, 5 O. C 307 ... 463
——v. United Refineries, 9 Rang. 56: 134 I. C. 737: (1931) Rang. 139 ... 595
——Ravji Jambhekar v. Pralhaddas Subkaran, 20 Bom. 133: 24, 148, 149, 150 151, 152, 277, 399
——Sarup v. Hardeo Prasad, 50 All. 309: 25 A. L. J. 1091: 108 I. C. 144: (1928) All. 68 596 49, 66, 67, 270, 302
——Sarup v. Jasoda Kunvar, 34 All. 158: 9 A. L. J. 72: 13 I. C. 138. 596
——Sarup Bhagat v. Bansimondar, 42 Cal. 742 ... 259
——Singh v. Ghulab Rai, 1 Lah. 262: 55 I. C. 610 278, 288, 309, 410
——Singh v. Perumal, 9 S. L. R. 150: 32 I. C. 582 ... 588
Rama v. Visvanatha, 45 Mad. 345: (1922) Mad. 23: 15 L. W. 130 ... 545
——Iyer v. Venkatachallam Pattar, 30 Mad. 75, 83 : 16 M. L. J. 564: 1 M. L. T. 329 ... 78, 80, 230
Ramachandra v. Sesha, 17 Mad. 85 ... 27, 31
——Rao v Kuppusami Iyer, 8 M. L. J. 262 ... 229
Ramajogayya v. Jagannadam, 42 Mad. 185: 25 M. L. T. 23: 36 M. L. J. 29: (1919) M. W. N. 148 49 I. C. 872 (F.B.) ... 142
Ramakrishna v. Kasivasi, 27 L. W. 322 : (1928) M. W. N. 185: 108 I. C. 282: (1928) Mad. 407: 54 M. L. J. 412 ... 142
Ramakrishnayya v. Kassim, 13 Mad. 172 ... 191, 193, 290
Ramalinga v. Muthu, 29 I. C. 573 (Mad.) ... 260
Raman v. Nagarathna, 11 M. L. T. 246 ... 542
Ramanadan v Gundu, (1928) M. W. N. 680 : (1928) Mad. 1238: 113 I. C. 456 66, 67, 222, 249, 270, 271, 326, 466, 467
Raman Chettiar v. Gopalachari, 31 Mad. 223: 4 M. L. T. 97 ... 38, 39
——Chetty v. Pasupathy Iyer, 24 M. L T 502 ... 59
Ramanchetty v. Mahomed Ghouse, 16 Cal. 432 ... 576
——v. Municipal Council of Kumbakonam, 30 Mad. 290 : 2 M. L. T. 294 ... 120
——v. Nagarathna Naicker, 11 M. L. T. 246 : 15 I. C. 380 ... 80, 230, 542
Ramanadhan v. Katha Velan, 41 Mad. 353 : 33 M. L. J 629: 42 I. C. 934: 6 L. W. 753 : (1917) M. W. N. 843 : 11, 37, 59, 542
Ramanjulu Naidu v. Aravamudu Iyengar, 33 Mad. 317 : 7 M. L. T. 373 : 5 I. C. 735 ... 174

PAGE

Ramanuja Ayyangar v. Sadagopa Ayyangar, 28 Mad. 205 : 15 M. L. J. 249 ... 59, 327
Ramasami Ayyar v. Ganapathi, 1 L. W 100 : 24 I. C. 709 ... 466
——Konan v. Bhavani Aiyar, 3 M. H. C. R. 247 ... 372, 379
——Chetty v. Municipal Council of Tanjore, 29 Mad 360 ... 120
——Mudaliar v. Muthuswami Ayyar, 30 I C. 481 ... 142, 547, 596
——y. Sellattammal, 4 Mad. 375 ... 545, 547
——Pandia Thalavar v. Anthappa Chettiar, 16 M. L. J 422 ... 64, 111
Ramayyar v. Shanmugam, 15 Mad. 70 ... 377, 378
Ramchandra v. Gharbharan Ahir, 11 Pat. L T. 866 : 132 I. C. 112. 566
Ramchurn Mullick v. Luchmechand Radakissen, (1854) 9 Moo P. C. 46, 74 : 14 E. R 215 : 2 C. L. R. (Eng.) 1664 : 23 L T. 25 49, 277, 281, 282, 392
Ramcoomar Mittar v. Ichamoydasi, 6 Cal 36 : 6 C. L. R. 429 ... 547
Ramen v. Mahomed, 16 Cal. 432 ... 583
Rameswar Das v. New Jooria Sugar Co. 94 I. C. 371 : (1926) Sind 201 ... 62
——Mondal v. Povahati Debi, 20 C. L. J. 23 : 25 I. C. 84 ... 547
Ramgopal v. Sitaram, 268 P. L R. 1913 : 226 P. W. R. 1913 : 20 I. C. 319 ... 336
Ramjawarin v. Ram Singh, 2 Lah. L. J. 314 ... 566
Ramjiban Serowgy v. Goghore Nath Chatterjee, 25 Cal. 401 : 2 C. W. N. 188 ... 524
Ramlal v. Lakshmichand, 1 B. H. C. R. App. 51 ... 131
——Mookerjee v. Horan Chandra Dhar, 3 B. L. R. (O.C.J.) 130 ... 84, 464
——Sircar v. Gopal Doss, 7 W. R. 154 ... 20
Ram Narain Sahu v. Lachmi, 60 I. C. 385 ... 537
Ramnath v. Ram Rao, 46 Bom. 358 : 23 Bom. L. R. 1135 : 65 I. C. 966 : (1922) Bom. 281 ... 131
Ramprasad v. Shrinivas, 27 Bom. L. R 1122 : 90 I. C. 685 ... 112, 576, 583
Ramsekhar v. Mathura Lal, 4 Pat. 820 : 90 I. C. 249 : (1925) Pat. 557 566
Ramuz v. Crowe, (1847) 1 Ex. 167 : 16 L. J. Ex. 280 : 11 Jur. 715 : 154 E. R. 70 : 74 R. R. 628 212, 288, 339, 536
Ramzan Ali v. Vellaswami Pillai, 5 L B. R. 198 : 8 I. C. 967 60, 238, 326, 541
Ramzan & Co. v. Sheriff Mahomed, 76 I. C. 578 : (1924) Bom. 520 537
Ramchand v. Ravjibhai, (1926) Bom. 357 : (1926) M. W. N. 45 : 92 I. C. 1028 ... 595
Rangappa v. Bisemilla Khan, 12 N. L R. 9 : 32 I. C 238 ... 336
Rangaraju v. Maddura Basappa, 24 M. L. J. 363 : 18 I. C. 968 : 13 M. L. T. 325 : (1913) M. W. N. 415 ... 112
Rangaswami v. Sankarlingam, 43 Mad. 816 ... 24, 45, 49, 118
——v. Somasundaram, 27 L. W. 820 : 107 I. C 646 : (1928) Mad, 173 : 54 M. L. J. 150 ... 186
Ranjit Singh v. Naesbat, 24 All. 504 : (1902) A. W. N. 166 ... 189
Raper v. Birkbeck, (1812) 15 East. 17 : 104 E. R. 750 : 13 R.R. 354 323, 343
Raphael v. Bank of England, (1855) 17 C B. 161 : 25 L J. C. P. 33 : 4 W. R. 10 : 104 R. R. 638 : 139 E. R. 1030 12, 67, 70, 254, 468

PAGE

Ratan Singh v. Pirbhu, (1931) All. 302 : 131 I. C. 135 : (1931) A L. J. 230 ... 28, 30
Ratanlal Rangildas v. Virijbukhan, 17 Bom. 684 24, 27, 44, 576
Rawlinson v. Stone, (1746) 3 Wills. 1 : 95 E. R. 899 ... 146
Rayner v. Fussey, (1859) 28 L. J. Ex 132 ... 190
Read v. Hutchinson, (1813) 3 Camp. 352 ... 227
Reckitt v. Barnett, (1929) A. C. 176 : (1928) W. N 287 : 98 L. J. K. B 136 ; 140 L. T. 208 : 45 T. L. R. 36 : 34 Com. Cas. 126 ... 122, 360, 490
Redmayne v Burton, (1860) 2 L. J. 324 ... 340
Reeves v. Butcher, (1891) 2 Q. B. 509 : 60 L. J. Q. B. 619 : 65 L. T. 329 : 39 W. R. 626 ... 566
Reference under Stamp Act, 17 All. 211 : (1895) A. W N. 61 (F.B.) 27, 31
——4 Bom. L. R. 912 ... 35
——5 Mad. 394 ... 554
——7 Mad. 176 ... 554, 559, 562
——8 Mad. 87 (F. B) ... 27, 31, 556
——8 Mad. 564 ... 597
Reg v. Bhista Bin Madanna, 1 Bom. 308 ... 16
Rego v. Philip Tauro, 56 M. L. J 580 : 26 L. W. 400 : (1929) M. W. N. 208 : (1929) Mad. 371 ... 566
Reyelle Jogayya v Vekataratnamma, 23 M. L J. 412 ... 547
Reid v. Furnival, (1833) 1 Cr. & M. 538 : 2 L. J. Ex. 199 : 5 C. & P 499 : 38 R R. 684 : 149 E R. 513 ... 64, 250
——v. Rigby & Co. (1894) 2 Q. B. 40 : 63 L. J. Q. B. 451 : 10 T. L. R. 418 ... 122
Relu Mal v. Shoran, 132 I. C. 844 : 32 P. L. R. 767 ... 604
Remfry v. Shillingford, 1 Cal. 130 ... 554
Reoti Lal v. Manna Kunwar, 44 All. 290 : (1922) All. 270 : 20 A. L. J. 126 ... 58
Republica de Gautemala v. Nunez, (1927) W. N 222 : (1927) 1 K B 669 ... 504, 505
Reversion Fund v. Maison Cosway, (1913) 1 K. B. 364 ... 136
Rew v. Pettet, (1834) 1 A. & E. 196 : 3 N. & M. 456 : 40 R. R. 284 : 110 E. R. 1181 ... 138
Rex v. Box, (1815) 6 Taunt. 325 : 128 E. R. 1060 ... 38, 78
——v. Holden, (1912) 1 K B. 483 ... 129
——v Lambton, (1818) 5 Price 428 : 19 R. R. 645 : 146 E. R. 654 ... 211
Reyner, *Ex parte*, (1868) 17 W. R. 64 ... 127
Reynolds v. Chettle, (1811) 2 Camp. 595 ... 304
——v. Doyle, (1840) M. & Gr. 753 : 4 Jur. 992 : 133 E. R. 536 ... 205
——v Peto, (1855) 11 Ex. 418, on appeal from 9 Ex. 410 : 156 E. R. 894 ... 45, 170
——v. Wheeler, (1861) 10 C. B (N S) 561 : 30 L. J. C. P. 350 : 4 L. T. 472 : 7 Jur. (N. S.) 1290 : 142 E. R. 572 : ... 184, 387
Richards, *In Re*, (1887) 36 Ch. D. 541 : 56 L. J. Ch. 923 : 57 L. T. 249 : 36 W. R. 118 ... 218, 221

PAGE

Richards, *In Re*, v. Richards, (1831) 2 B. & Ad. 447 : 9 L. J. K. B. (O. S.) 319 : 36 R. R. 619 : 109 E. R. 1208 ... 42
Richardson v. Mellish, (1824) 2 Bing. 229 : 3 Bing. 334 : 3 L J. (O. S.) C. P. 265 : 7 B. & C. 819, in H. L. 9 Bing. 125 : 9 Moore C. P. 435 : 130 E R. 294 : Ry. & M 66 : 1 C. & P. 241 : 27 R. R. 603 ... 259
——v. Richardson, (1927) P. 228 : 96 L. J. P. 125 : 157 L. T. 492 : 43 T L. R. 631 ... 157
Richdale, *Ex parte*, (1882) 19 Ch D. 409 : 51 L. J. Ch. 462 : 46 L. T. 116 : 30 W. R. 262 ... 63
Rickettes v. Bennet, (1847) 4 C. B. 678 at 699 : 17 L. J. C P. 17 : 11 Jur. 1062 : 136 E. R. 678 ... 119, 129
Bickford v. Ridge, (1810) 2 Camp. 537 ... 357, 432
Rimalt v. Cartwright, (1924) 93 L. J. K. B. 823 : 132 L. T. 40 : 40 T. L. R. 803 ... 345
Roberts, *Ex parte*, (1886) 18 Q. B. D. 286 (C. A.) :56 L. J. Q. B 74 : 56 L T. 599 : 35 W. R. 128 : 3 T. L. R. 132 : ... 457, 458, 501
——v. Tucker, (1851) 16 Q. B. 560 : 20 L. J. Q. B 270 : 15 Jur. 987 : 117 E. R. 994 : 83 R. R. 601 ... 154, 253, 354
Roberts v. Bethell, (1852) 12 C. B. 778 : 22 L. J. C. P. 69 : 16 Jur. 1087 : 1 W. R. 80 : 92 R. R. 874 : 138 E. R. 1111 ... 135, 462
——v. Peake, (1757) 1 Burr. 323 : 97 E R. 333 ... 45
——& Co. v. Marsh, (1915) 1 K. B. 42 : 84 L. J. K. B. 388 : 111 L. T. 1060 : 30 T. L. R. 609 ... 43
Robertson v. Kensington, (1811) 4 Taunt. 30 : 128 E. R. 238 ... 245
Robindra Nath Dutt v. Abdul Abad & Co., 52 Cal. 954 : 41 C. L. J. 368 : 29 C. W. N. 589 : 88 I. C. 400 ... 561
Robins v. Gibson, (1813) 3 Camp. 333 : 1 M. & S. 288 ... 317, 426
——v. May, (1839) 11 A. & E. 213 : 3 P. & D. 147 : 9 L. J. Q.B. 22 : 3 Jur. 1188 : 113 E. R. 397 ... 42
Robinson v. Central Bank of India, 9 Rang. 585 : ... 486, 488
——v. Hawksford, (1846) 9 Q. B. 52 : 15 L. J. Q. B. 277 ; 10 Jur. 964 : 115 E. R. 1195 ... 301, 352
——v. Marsh, (1921) 2 K. B. 640 ... 261
——v. Midland Bank, (1925) 41 T. L. R 402 ... 198
——v. Read, (1839) 9 B & C. 449 : 4 Man. & Gr. 349 : 7 L. J. K. B. (O. S.) 236 : 109 E. R. 167 ... 534
——v. Reynolds, (1841) 2 Q. B. 196 : 9 L. J Q. B. 219 : 1. G. & E 526 : 114 E. R. 76 : 3 P. & D 611 : 57 R R. 649 165, 202, 247, 266
——v. Yarrow, (1817) 7 Taunt. 455 : 1 Moore C. P. 150 : 129 E. R. 183 : 18 R. R. 537 125, 165, 196, 473
Robson v. Bennett, (1810) 2 Taunt. 388 : 127 E. R. 1128 : 11 R. R. 614 ... 160
——v. Hamilton, (1891) 2 Ch. 559 ... 146
——v. Oliver, (1847) 16 L. J. Q. B. 437 : 10 Q. B. 704 : 74 R. R. 477 : 11 Jur. 1056 : 116 E. R. 268 ... 310, 319, 401
Roche v. Campell, (1813) 3 Camp. 247 ... 298

PAGE

Roderick v. Hovil, (1811) 3 Camp. 103 ... 592
Rodrigues v. Speyer Bros., (1919) A. C. 59 ... 115
Rogers v. Langford, (1833) 1 Cr. J. M. 637 : 3 Tyr. 654 : 149 E. R. 555 228
——v Stephens, (1788) 2 T. R. 713 : 100 E. R. 384 : 1. R. R. 605 ... 415
——v. Whitelay, (1892) A. C. 118 : 61 L. J. Q. B. 512 : 66 L. T 303 163
Rogerson v Ladbrook, (1822) 1 Bing. 93 : 7 Moore 412 :
1 L. J. C. P. (O. S.) 6 : 130 E. R. 39 ... 162
Rohilkhand & Kumaun Bank v. Row, 7 All. 490 112, 204, 205, 502
Rokhal Chandra v. Ramachandra, (1921) Pat. 292 ... 596
Rokia Bi v. Haji Abdul, (1932) M. W. N 432 ... 465
Rolands v. Springett, (1854) 14 L. J. Ex. 227 ... 405
Rolin v. Steward, (1854) 14 C. B. 595 : 23 L. J. C. P. 148 :
2 C. L. R. 959 : 18 Jur. 536 : 2 W. R. 462 : 98 R. R. 774 :
139 E. R. 245 ... 154, 164
Rolls v. Pearce, (1877) 5 Ch. D. 730 : 46 L. J. Ch. 791 :
36 L. J. 438 : 25 W. R. 899 ... 162
Rollo v. Smith, 1 B. L. R. (O. C J.) 10 ... 109
Romer & Haslam, *In re*, (1893) L. R. 2 Q. B. 286 :
62 L. J Q. B. 610 : 69 L. T. 547 : 42 W. R. 51 ... 533
Roscow v. Hardy, (1810) 12 East. 434 : 104 E. R. 170 :
2 Camp. 458 ... 311, 397
Rose v. Sims, (1830) 1 B. & Ad. 521 : 9 L. J. K. B. (O. S.) 85 :
109 E. R. 881 ... 229
Ross v. London County Westminister and Parr's Bank Ltd, (1919)
1 K. B 678, 687 : 88 L. J. K. B. 927 : 120 L. T. 636 4?, 364, 365, 488
——& Co. v. C. R. Scrivin, 43 Cal. 1001 : 34 I. C, 235 :
20 C. W. N. 1192 ... 557
Rothschild v. Currie, (1841) 1 Q. B. 43 : 4 P. & D. 737 :
10 L. J. Q. B. 77 : 5 Jur. 865 : 113 E. R. 1046 : 55 R. R. 198 424, 508, 510
——& Sons v. Commissioners of England Revenue, (1894)
2 Q B. 142 ... 574
Roulet v. Fotterie, 18 Bom. 717 ... 556
Rouquette v. Overmann, (1875) L. R. 10 Q. B. 525 :
44 L. J. Q. B. 221 : 33 L. T. 420 105, 182, 307, 320, 424, 505, 508, 510
Rouse v. Bradford Banking Co., (1894) A. C. 586, 591 :
63 L. J. Ch. 890 : 71 L. T. 522 : 43 W. R. 78 ... 192, 193
Rowe *Re*, (1904) 2 K. B. 483 : 73 L. J. K. B. 594 : 91 L. T. 220 :
52 W. R. 628 : 11 Mans, 130 ... 328
——v. Tipper, (1853) 22 L. J. C. P. 135 : 13 C B. 249 : 17 Jur. 440 :
1 W. R. 152 : 138 E. R. 1194 395, 437, 438, 439
Rowe v. Young, (1820) 2 Bligh 391 : 4 E. R. 372 ... 93, 291, 367
Rowlandson v. Champion, 17 Mad. 21 ... 116
Royal Bank of Scotland v Rahim Cassum, 49 Bom. 270 :
27 Bom L. R. 506 : 87 I. C. 982 : 1925 Bom. 369 : .. 64, 325, 466
Royal Bank of Scotland v. Tottenham, (1894) 2 Q. B. 715 :
64 L. J. Q. B 99 : 71 L. T. 168 : 43 W. R. 22 :
10 T. L. R. 569 : 38 Sol. J. O 615 : 9 R. R. 569 ... 51, 70, 258

PAGE

Rucker v. Hiller, (1812) 3 Camp. 217 : 16 East 43 : 14 R. R. 278 : 104 E. R. 1005 ... 317
Ruff v. Webb, (1794) 1 Esq. 129 : 5 R. R. 723 ... 31, 44
Rumball v. Mertropolitan Bank, (1877) 2 Q. B. D. 194 : 46 L J. Q. B. 346 : 36 L. T. 240 : 25 W. R. 366 ... 80
Rundall v. Moon, (1852) 12 C. B 251 : 21 L. J. C. P. 226 : 138 E R. 904 ... 329
Rungaraju Sathruazau v. Maddura Bassappa, 24 M. L. J. 363 ... 112
Rungiah v. Hajee Fakir, 10 M. L. T. 338 : 10 I C. 627 .. 63
Rungildas v. Vrijbhukhan, 17 Bom. 584 ... 575
Russell v. Longstaffe, (1780) 2 Dougl, 514 : 99 E. R. 328 .. 97, 309, 319
——v. Phillips, (1850) 14 Q. B. 891 : 19 L. J. Q. B. 297 : 14 Jur 870: 117 E. R. 342 : 80 R. R. 423 ... 54, 366, 368
——v. Powell, 14 M. & W. 418 ; 14 L. J. Ex. 269 : 153 E. R. 538 ... 45
Rustamji A. Devar v. Ratanji R. Wadia, 7 B. H. C. R. (O. C. J.) 9 63
Rutherford, *In re*, (1880) 14 Ch. D. 687 : 49 L. J. Ch. 654 : 43 L. T. 105 : 28 W. R. 802 (C. A.) ... 271
Ryelie Jogayyah v. Nimna Shekai Venkataratnamma, 20 M. L. J. 412 547

S

Sabapathi v. Manickam, 91 I. C. 879 : (1926) Mad. 447 ... 547
Sadananda Pal v. Emperor, 32 Cal. 550 ... 31
Sadini Kondayya v. Kosagini Padaswami, (1915) M. W. N. 25 : 27 I. C. 919 ... 261
Sadsuk v. Sir Kishen, 46 Cal. 663 (P. C.) 46 I. A 33 : 29 C. L. J. 340 : 17 A. L. J. 405 : 25 M. L. T. 258 : 36 M. L. J 429 : 21 Bom. L. R. 605 : (1919) M. W. N. 310 : 23 C. W. N. 937 : 50 I. C. 216 ... 132, 140, 144
Sagappa v. Govindappa, 12 M. L. J. 351 ... 597
Sagarmal v Bhudan Sahu, 19 I. C. 251 ... 289
Sakhabhai v Magan Lal, 26 Bom. 206 ... 131, 547
Sakharam v Gulab Chand, 16 Bom. L. R. 743 ... 466
——Shankar v. Ramachandra Babu, 27 Bom. 279 ... 575
Sakhawat v. Emperor, 18 A L. J. 1151 : 59 I. C. 198 ... 464
Sakra Bhai v. Maganlal, 26 Bom. 206 ... 131, 132, 547
Saligram v Lachman, 50 All. 211 : 107 I. C. 42 : (1928) All. 46 ... 189
——v. Radhoy, (1931) All. 560 : (1931) A. L. J. 522 : 134 I. C. 254... 595
Salmon v. Webb, (1852) 3 H. L. C. 510 : 7 Dow. & L. 324 : 13 Q B. 894 : 19 L. J. Q. B. 34 : 14 Jur. 33 : 10 E. R 201 ... 531
Salton v. New Beeston Cycle Co., (1900) 1 Ch. 43 : 81 L T. 437 : 48 W. R. 92 ... 136
Samarendra v. Mahadeo, 63 I. C. 295 .. 336
Sami v. Ramasami, 44 M. L. J. 171 ... 569
Sami Sah v. Parthasarathi Chetti, 31 I. C. 739 (Mad) ... 463
Saminatha Iyer v. Muthusami Pillai, 30 Mad. 530 ... 259

PAGE

Saminatha Pathan v. Radhakrishna Pathan, 15 M. L. T. 243 : 23 I C. 85 ... 595
Saminathan Chetty v. Palaniappa Chetty, 18 C. W. N. 617 : 41 I. C. 142 ; 26 I. C. : (1914) A C. 618 (P. C.) : 228
83 L. J. P. C. 131 : 110 L. T. 913 ... 360, 536
Samuel v Newbold, (1905) A. C. 461 : 75 L. J Ch. 705 : 95 L. T. 209 .. 65
——Pillai v. Ananthanatha Pillai, 6 Mad 351 ... 11
Sana Eman Sahib v. Mooma Ena Mahommed, 22 I. C. 77 ... 15
Sanderson v. Collman, (1842) 4 M. & Gr 209 : 4 Scott N. R. 638 : 11 L. J. C. P. 270 : 134 E R 86 ... 471
Sands v. Clarke, (1849) 8 C. B. 751 : 19 L. J. C. P. 84 : 14 Jur. 352 : 137 E. R. 703 : 79 R. R. 719 287, 297, 309, 319
Sanehi Lal v. Oonkar Mal, 18 A. L. J. 981 ; 59 I. C. 604 ... 175
Sanka Krishnamurthi v. The Bank of Burma, 35 Mad. 692, 698 ... 122, 125, 130 131, 132, 141, 234
Sankara v. Virupakshappa, 7 Bom. 146 ... 187, 189
Santana v. Sundaraswami, 1 M. L. T. 393 ... 203
Sanyasi Charan Mandal v. Krishnadan, 49 Cal. 560 .. 131
Santhu Mohideen v. Jamal, (1928) Mad. 1092 : 112 I. C. 404 : (1928) M. W. N. 591 ... 376
Sarada Nath v. Gobinda, 23 C. W. N. 534 ... 577
Sarat Chunder Dutt v Kedar Nath Das, 2 C W. N. 286, 288 ... 58
——Lakshi Dassya v. Narendra, (1929) Cal. 292 : 33 C. W. N. 250 .. 566
Sard v. Rhodhes, (1836) 1 M. & W. 153 : 1 Tyr. & G. 298 : 4 Dow. P. C. 743 : 1 Gale 376 : 5 L. J Ex. 91 : 150 E. R. 385 ... 535
Sarja Sahu v. Sukhi Lal, 4 Pat. L. T. 577 ... 28
Saroj Prasad v. W. W. Bonoke, 56 I C. 379 ... 29
Sassoon & Sons Ltd. v. The International Banking Corporation, 55 Cal. 1 ... 153, 154, 575
Sati Prasad v. Manmatha, 6 I. C. 291 : 7 M. L. T. 232 ... 13
Sathamuthu v. Abdul Karim, (1932) M. W. N. 1149 : 36 L W. 777 : 63 M. L. J. 880 ... 177, 220
Satya Priya Ghoshai v. Gobinda Mohun, 14 C. W. N 414 : 11 C. L. J. 236 : 5 I. C. 110 ... 123
Saul v. Jones, (1858) 28 L. J. Q. B. 37 : 1 E. & E. 59 : 5 Jur. (N S.) 220 : 7 W. R. 47 : 117 R. R. 137 : 120 E R 829 ... 297, 298
Saunderson v. Bowes, (1811) 14 East 500 : 104 E. R. 693 ... 298
——v. Jackson, (1800) 2 Bos, & P. 138 : 3 Esq. 130 : 126 E. R. 1257 ... 31, 32
——v. Judge, (1795) 2 H. Bl. 509, 510 : 3 R. R. 492 : 126 E. R. 475 298, 403
——v. Piper, (1839) 5 Bing. N. C. 425 : 7 Scott. 408 : 7 D. P. C. 632 : 50 R. R. 731 : 8 L. J. C. P. 227 : 132 E. R. 1163 ... 92
Sausone Ezekiel Judah v. Addi Rajah Queen Bibi, 2 M. H. C. R. 177, 179 ... 123
Savage v. Aldren, (1817) 2 Stark. 232 : 19 R. R. 707 ... 568

PAGE

Savory & Co. v. Lloyds Bank, (1932) 2 K. B. 122 : (1932) W. N. 77 : 146 L. T. 530 : 48 T. L. R. 344 : 37 Com. Cas. 259 : 101 L J. K. B. 499 ... 485, 486, 491, 492
Saxby v. Fulton, (1909) 2 K. B. 208 : 78 L. J. K. B. 781 : 101 L. T. 179 : 53 Sol. J. 307 : 25 T. L. R. 446 ... 507
Scard v. Jackson, (1875) 34 L. T. N. S. 65 (note) : 24 W. R. 159 ... 96, 98
Schavevien v. Morris, (1921) 37 T. L. R. 366 ... 103
Schneider v. Norris, (1814) 2 M. & S. 286 : 105 E. R. 388 ... 31
Schofield, *Ex parte*, (1879) 12 Ch. D. 337 (C. A.) : 48 L. J. Bk. 122 : 40 L. T. 823 : 27 W. R. 925 ... 63
Scholey v. Rambsbottam, (1810) 2 Camp. 485 ... 69, 358
Scholfield v. Londesborough, Earl. (1896) A. C. 514, 522 : 65 L.J.Q.B. 593 : 75 L. T. 254 : 45 W. R. 124 : on appeal from (1895) 1 Q. B. 536 (C.A.) 361, 375, 380. 384, 386
Schroeder v. Central Bank of London, (1876) 34 L. T. 735 : 24 W. R. 710 ... 159
Schultz v. Astley, (1836) 2 Bing. N. C 544 : 7 C. & P 99 : 2 Scott. 815 : 5 L.J.C.P. 130 ; Hodges 425 : 132 E. R. 212 : 42 R. R. 651 ... 95, 96, 97
Scott v. Gilmore, (1810) 3 Taunt. 226 ; 128 E. R. 90 : 12 R. R. 641 ... 202
——v. Lifford, (1808) 9 East. 347 : 103 E. R. 605 : 1 Camp. 246, 248. 72, 408
Secretary of State for India v. Hughes. 38 Bom. 293 ... 544
——v. Radhika Prasad, 46 Mad. 259 : 44 M. L. J. 685 : 18 L W. 210 : 74 I. C. 785 : (1923) Mad. 667 ... 93, 291
Seetharama Chetty v. Seshiah Chetty, (1912) M. W. N. 1011 : 17 I C. 417 ... 234, 545
Seetharamayyar v. Munisami, (1919) M. W. N. 1851 : 9 L. W. 427 : 50 I. C. 87 : 37 M. L. J. 613. ... 93
Serrell v. Derbyshire Ry. Co., (1850) 9 C. B. 811 : 19 L. J. C. P. 371 : 137 E. R. 1110 : 82 R. R. 532 ... 269
Sesha Aiyer v. Bhavaji Mangal Dossjee Varu, 20 M. L. J. 144 7 M. L. T 85 : 5 I. C. 757 ... 58, 206
Seshanna Chetti v. Ramaswami Chetti, 4 M. H. C R. 7 ... 260
Sethna v. Jwala Prasad, 39 Bom. 513 : 16 Bom. L. R. 972 : 29 I. C. 896 ... 22
——v. Ladak, 8 I. C. 924 : 4 S. L. R. 147 ... 209, 555, 556
Sewa Ram v. Hoti Lal, 53 All. 5 : (1930) A. L. J. 1509 : 130 I. C. 698 : (1931) All. 108 ... 327, 542
Shah D. N. Co. v. The Bengal National Bank Ltd., 47 Cal. 861 : 33 C. L. J. 541 : 60 I. C. 940 : (1921) Cal. 302 ... 304
Shadi Ram v. Pirj Raj, 13 P. R. 1871 ... 21, 138
Shaha v. Bengal National Bank, 47 Cal. 861 ... 1[illegible], 270, 466
Shaik Ismail v. Ezzlliai, 56 I. C. 930 : 12 Bur. L. T. 249 ... 15
Shaikh Imam v. Ishak Ali, 7 N. L. R. 39 : 10 I. C. 734 ... 167, 532
——Omed Ali v. Nidhee Ram, 22 W. R. 367 ... 237
Shamnugger Jute Factory Co. v. Ram Narain Chatterjee, 14 Cal. 189 ... 118

PAGE

Shand v. Du Buisson, (1874) L. R. 18: Eq. 283: 43 L. J. Ch. 508: 22 W. R. 483 ... 49
Shanker Das v. Ditto Ram, 8 Lah. L. J. 694 .. 319
Shanmuga Pillai v. Govindasami, 30 Mad. 459 ... 332
Shanmugam v. Chinnaswami, 14 Mad. 470 ... 278, 322, 416
Shanmuganatha v. Srinivasa Ayyar, 40 Mad. 727, 731: 31 M. L. J 138, 145, 146: 35 I. C. 219: 4 L. W. 27: (1916) 2 G. W. N. 14 17, 129, 234, 544, 545
Shanti Das v. Hira Lal, 59 I. C. 657 ... 95
Shard *In re*, 28 Cal. 574 ... 547
Shaw & Co. v. Holland, (1913) 2 K. B. 15: 82 L. J. K. B. 592: 108 L. T. 543: 29 T. L. R. 341: 18 Com. Cas. 153 ... 69, 243
Shearman v. Fleming, 5 B L. R. 619 ... 275, 386
Sheikh Akbar v. Sheikh Khan, 7 Cal. 256: 8 C. L. R. 528 ... 569
Shellard, *Ex parte*, Adams, *In re*, (1873) 17 Eq. 109: 43 L. J. Bk. 3: 29 L. T. 621: 22 W. R. 152: 38 J. P. 260 ... 43
Shelton v. Braithwaite, (1841) 7 M. & W. 436: 10 L. J. Ex. 218: 5 Jur. 28: 151 E. R. 836: 58 R. R. 755 ... 405
——v. Braithwaite, (1841) 8 M. & W. 252: 1 Dow. P. C. 354: 11 L. J. Ex. 54: 5 Jur. 1200: 151 E. R. 1032: 58 R. R. 692 ... 402, 407
Shenton v. James, (1843) 5 Q. B. 199: 114 E. R. 1224 ... 28
——Prasad v. Gobind Prasad, 49 All. 464: 100 I. C. 332: 25 A. L. J. 305: (1927) All. 292 63, 220, 221, 524
Shanker v. Jaddo, 36 All. 383: 12 A. L. J. 1173: 41 I. A. 216: 24 I. C. 504: 18 C. W. N. 968: 16 M. L. T. 175: 20 C. L. J. 282: (1914) M. W. N. 593: 16 Bom. L. R. 810 ... 131
Sheobans v. Shah Madho Lal, (1931) All. 662: ... 334
Sherrington v. Jermyn, (1828) 3 C. & P. 374 ... 379
Sheth Kahandas Narandas v. Dahia Bhai, 3 Bom. 182 ... 148, 152
Shiam Lal v. Ganeshl Lal, 28 All. 288 ... 546
Shiddheshwar v. Ramachendra Rao, 6 Bom. 463, 466 ... 135
Shivaram v. Krishna Bai, 31 Bom. 80 ... 109
Shopasin v. Munshi Narasingh, 62 M. L. J. 649 (P. C.) ... 256
Shrewsbury v. North Staffordshire Ry., (1866) L. R. 1 Eq. 593 ... 117
Shridhar v. Buxiram, (1932) Nag. 55 ... 319
Shrinivas Dass v. Maher Bai, 41. Bom. 303 (P. C.) ... 327
Shunkerdas v. Punjab National Bank, 62 I. C. 472 ... 160
Shute v Robins, (1828) 3 C. & P. 80: 33 R. R. 650 ... 280, 281
Shuttleworth, *Ex parte*, (1797) 3 Ves. 368: 30 E. R. 1057: 4 R. R. 20. 83
——v. Stephens, (1808) 1 Camp. 407 ... 55, 91
Shyam Sundar v. Titagur Paper Mills, (1928) Cal. 123: 46 C. L J 566: 32 C W. N. 125; 106 I. C 848 ... 139, 140, 556
Sibree v. Tripp, (1846) 15 M. & W. 23: 12 L. J. Ex. 318: 153 E. R. 745: 71 R. R. 545 27, 29, 329, 330, 553, 539
Sichel v Borch, (1864) 33 L J. Ex. 179: 2 H & C. 954: 9 L. T. 657: 10 Jur. N. S. 107: 12 W. R. 346: 159 E. R. 395 ... 218
Siggers v. Brown, (1836) 1 Moo. & Rob. 520 ... 403

PAGE

Silleman Datoo v. Iso Mad Muso, 2 S. L. R. 11 ... 138
Simmons v London Joint Stock Bank, (1890) 1 Ch. 270 ... 69
Simon v. Hakim Mahomed Sheriff, 19 Mad. 368, 372 ... 529, 531
——v. Lloyd, (1835) 2 C. M. & R. 187 : 5 Tyr. 701 :
3 Dow P. C. 830 : 4 L. J. Ex. 195 : 150 E. R. 80 ... 536
Simpson v. Bloss, (1816) 7 Taunt. 246 : Holt. N. P. 273 :
2 Marsh. 542 : 129 E. R. 99 : 17 R. R. 509 ... 259
——v. Eggington, (1855) 10 Ex. 845 : 24 L J. Ex. 312 :
156 E. R. 683 : 102 R. R. 867 ... 328
——v. Vaughan, (1739) 2 Atk. 30 : 2 Ves. 101 : 26 E R. 415 ... 29
Simulu Ibrahim Rowthan v. Abdul Rahiman, 8 M. L. J. 182 ... 580
Sinclair v. Brougham, (1914) A. C. 398 ... 332
Sindba v. Abraham, 20 Bom ;55 ... 62, 64
Singar Kunwar v. Basdeo Prasad, (1930) All. 568 : 124 I. C. 717 ... 463
Sirajudin v. Champo, 3 Lah. L. J. 439 : (1921) Lah. 148 :
68 I. C. 443 ... 463
Sital Chandra v. Alen. J. Delanney, 20 C. W N. 1158 ... 10
Sitaram Krishna v. Chimandas Fatechand, 52 Bom. 640 :
115 I. C. 400 (1928) Bom. 516 : 30 Bom. L. R. 1300 126, 127, 139
Sitaram Krishna v. Daji Devaji, 7 Bom. 418 ... 377
Sitarama Chetty v. Krishnasami Chetty, 38 Mad 374 ... 569
Sivaramakrishna Pattar v. Moidin Musaliar, 33 Mad 34 : 6 M. L. T.
237 ; 19 M. L. J. 509 : 3 I. C. 428 83, 88, 176, 239, 270
Skilbeck v. Garbett, (1845) 14 L. J. Q. B. 338 : 7 Q B. 846 :
9 Jur. 939 : 68 R. R. 580 ... 403
Sleigh v. Sleigh, (1850) 5 Ex. 514 : 19 L. J. Ex. 345 :
15 L. T. O. S. 475 : 155 E. R. 224 ... 205, 457
Slindy v. Henderson, 4 B. & Ad. 590 ... 100
Slingsby v. District Bank Ltd., (1931) 2 K B. 588 ;
on appeal (1932) 1 K B. 544 : 47 T. L. R. 587 : 51, 124, 155, 239, 358, 489, 490
——v. Westminster Bank, (1931) 1 K. B. 173 : 36 Com. Cases 54 :
47 T. L. R. 1 : 100 L. J. (K. B.) 195 : 144 L. T. 369 ... 1 12. 489
Slomon v. Cox, (1834) 1 Cr. M. & R. 471 : 5 Tyr. 174 : 4 L. J Ex. 7 :
149 E. R. 1165 : 40 R. R. 631 ... 535, 539
Smethurst v. Taylor, (1844) 12 M. & W. 545 : 50 L. J. Ex. 38 :
152 E. R. 1315 ... 123
Smith v. Abbott, (1741) 2 Stra. 1152 : 93 E. R 1095 ... 366
——v. Bank of New South Wales, (1872) L. R. 4 P. C. 194. 208 :
41 L. J. Adm. 49 : 27 L. T. 46 : 8 Moore P. C. (N. S.) 443 :
20 W R. 557 : 1 Asp. M. C. 365 : 17 E. R. 378 ... 278
——v. Bellamy, (1817) 2 Stark. 223 : 19 R. R. 704 ... 55
——v. Braine, (1851) 16 Q. B. 244 : 20 L. J. Q. B. 201 : 15 Jur. 287 :
117 E. R. 872 ... 266, 468
——v. Clarke, (1794) 1 Peake 295 : 1 Esp. 179 (N. P) ... 249
——v. Ferrand, (1827) 7 B. & C. 19 : 9 D & R. 803 :
5 L. J. K B. (O. S.) 355 : 108 E. R. 632 ... 534
——v. Gordon, (1883) 1 Cab. & E. 105 ... 346

PAGE

Smith v. Kendall, (1794) 6 T. R. 123 . 101 E. R. 469 : 1 Esp. 231 ... 78
——v. King, (1892) 2 Q. B. 523 ; 67 L. J. 420 : 40 W. R. 542 ... 111
——v. Knox, (1800) 3 Esp. 46 ... 164, 175, 205
——v. M'Clure, (1804) 5 East. 476 : 102 E. R. 1153 ... 40
——v. Marsack, 6 C. B 486 ; 18 L. J. C. P. 65 : 6 D. & L. 363 : 12 Jur. 1050 : 136 E. R. 1338 ... 180, 473
——v. Mercer, (1867) L. R. 3 Ex. 51 : 37 L. J. Ex. 24 : 17 L. T. 317. 401
——v. Mullet, (1809) 2 Camp. 208 : 11 R. R. 694 ... 437
——v. Mundy, (1860) 29 L. J. Q B. 172 : 3 E. & E. 22 : 6 Jur. (N. S.) 977 : 2 L. T. 373 : 8 W. R 561 : 121 E. R. 352 ... 66, 217, 340
——v. Nightingale, (1918) 2 Stark. 375 : 20 R. R. 694 ... 34, 46
——v. Prosser, (1907) 2 K. B. 735, 746, 751 : 77 L. J. K. B. 71 : 97 L.T. 155 : 51 Sol. J. 551 : 23 T.L R. 597. 69, 95, 96, 99, 122, 254, 386, 580
——v. Smith, (1863) 32 L. J. C. P. 149 ... 62
——v. Union Bank, (1875) L. R. 1. Q B. D. 31 : 45 L. J. Q. B. 149 : 33 L. T. 557 : 24 W. R. 194 ... 357, 481
——v. Vertue, (1860) 30 L. J. C. P. 56, 59 : 9 C. B N. S. 214 : 7 Jur (N. S.) 395 : 3 L. T. 583 : 9 W. R. 146 : 142 E. R. 84 ... 294, 366
Smout v. Ilbery, (1842) 10 M. & W 1 : 12 L. J. Ex. 357 : 152 E. R. 357 : 62 R. R. 510 ... 136
Snee v. Prescot, (1743) 1 Atk. 245 : 26 E. R 157 ... 238
Snowball, *Ex parte*, (1872) L. R. 7 Ch. 534, 549 ... 70
Soares v. Glyn, (1845) 8 Q. B. 24 : 14 L. J. Q B. 313 : 9 Jur. 881 : 115 E. R. 782 : 70 R. R. 410 ... 86
Soari v. Subbarayan, 5 L. W. 706 ... 259
Sobhomal v. Pohumal, 5 S. L. R. 168 : 13 I. C. 255 129, 130, 148, 401
Societe Coloniale, etc. v. London and Brazilian Bank, Ltd., (1911) 2 K. K. 1024 ... 162
Societe Anonyme v. Baumgart, (1927) W. N. 78 : (1927) 96 L. J. K. B. 789 : 43 T. L. R. 278 : 136 L. T. 799 ... 260, 507
Societe Generale v. Agopian, (1895) 11 T. L R. 244 ... 498
——Des Hotels v. Cummings, (1922) 1 K S 451 ... 328
Society Generale v. Metropolitan Bank, (1873) 27 L. T. (N S) 849 : 21 W. R. 335 ... 497
Solamali Mudaliar v. Vadamali Muthiran, 23 M. L. J. 273 : 16 I. C. 96 ... 584
Solarte v. Palmer, (1834) 1 Bing. (N.S.) 874 : 1 Scott. 1 : 131 E. R. 1902 : 37 R. R. 34 : 2 Cl. & F. 93 : 6 E. R. 1091 ... 404, 405, 406
Solli v. Hinde, (1834) 2 C. R. & M 516 : 4 Tyr. 305 : 2 L. J. Ex. 151 : 149 E. R. 865 ... 202
Solomon v. Davis, (1883) 1 Cab. & E. 83 ... 288
——v. Turner, (1815) 1 Stark 51 ... 65
Soltykoff, *In re*, Ex parte Margrett, (1891) 1 Q. B. 413 : 60 L J. Q. B. 339 : 39 W. R. 337 : 8 Morell 27 ... 113, 235, 502
Somarimull v. Bhairo Das Johury, 7 B. L. R. 431 (note) ... 398, 536
Somasundaram v. Krishnamurti, 17 M. L. J. 126 ... 128, 541, 544

PAGE

Somasundaram v. Venkatanarayana, 26 I. C. 356: 16 Cr. L. J 2: 8 Bur. L. T. 17 ... 140
——Chettiar v. Narasimha Chariar, 29 Mad. 212, 216 ... 530, 531
——Chetty v. Lakshman Chetty, 17 I. C 951 (L.B.) .. 174
Sona Eman Sahib v Moona Ena Mahomed, 22 I. C. 77: ... 7 Bur. L. T. 96: 7 L. B. R. 70 ... 15
Sorabsha Moor v. Kushaldas Gokuldas, 10 Bom. L. R 268. 53, 54, 248 290
Sornalinga Mudali v. Pachai Naicken, 38 Mad. 680: 26 M.L.J 113: (1914) M. W. N. 274: 22 I. C. 1. 33, 186 507, 524, 525
Sottomayor v. De Barros, (1877) 3 P. D. 1 (C.A.) ... 502
Souchette v. London County & Westminster Bank, (1920) 36 T. L. R 195 ... 359
South Indian Export Co. Ltd. v. Subbiar, 28 M L. J. 696 ... 132
South of Ireland Colliery Co. v. Waddle, (1867) L R. 4 C.P. 617 ... 118
Southall v. Rigg, (1851) 11 C.B 481: 20 L. J C. P. 145: 15 Jur. 706: 138 E. R. 360: 87 R. R. 731 ... 63 208, 539
Soward v. Palmer, (1818) 2 Moore 274: (1918) 8 Taunt. 277: 19 R. R. 515: 129 E. R. 390 ... 397, 539
Sowcar Lodd Govinda Dass v Muneappa Naidu, 31 Mad. 534 ... 91, 526, 528
Speyer Bros v. Commissioners, Inland Revenue, (1908) A. C. 92 (H. L.): 77 L. J. K. B. 302: 24 T. L. R. 257: 98 L T. 286: 52 Sol. J. 222 ... 299, 578
——v. Inland Revenue, (1907) 1 K. B. 247 (C. A.) ... 299
Spindler v. Grellett, (1847) 1 Ex. 384: 5 D & L. 191: 17 L.J. Ex 6: 154 E R 163 ... 297, 309
Sproat v. Mathews, (1786) 1 T. R. 182: 99 E. R. 1041 ... 343, 369, 424
Sree Puthalwant Rao v. Futteh Ooddeen, 1 N.W.P.H.C.R. 143 ... 575
——Lal v. Lister Antisceptic Dressing Co., 52 Cal. 802: (1925) Cal. 1062: 29 C. W. N. 828: 89 I. C 328 ... 120, 139
Sreemutty Monmohinee Dabee v. The Secretary of State for India, 22 W, R 106 ... 147
Sreeramulu v. Venkata Reddi, 8 M. L T. 247 ... 325, 326
Sri Rajah v Sri Rajah, 3 Mad. 61 548
Sridhar v. Tyrwhitt, (1901) A. W. N. 113 ... 154
Srinivasa v. Sheo Gobind, 20 I. C. 156 ... 548
——Moorthy v. Venkata Varada Ayyangar, 29 Mad. 239, 267 ... 77
——Pillai v. Fenkataammal, 24 M L J. 296: 19 I. C. 410 ... 83, 88
Srinivasaraghavan v. Ranganathan, 36 M.L J. 618 ... 62
Sri Ram v. Sobha Ram, 44 All. 521: 67 I C. 513: 20 A. L. J 315: (1922) All. 213 ... 524
Sriramulu Naidu v. Andalammal, 30 Mad. 149 ... 116
Srirangachariar v. Ramasami Iyengar, 4 M. L. J. 106 ... 259, 261
Stafford v. Henry, 12 Ir. Eq. R. 400 ... 24
Stagg v. Elliot, (1862) 12 C. B N. S. 373: 31 L. J. C. P. 260: 6 L. T. 433: 9 Jur. N. S. 158: 10 W. R. 647: 142 E. R. 1187 ... 122
Starkey v. Bank of England, (1903) A. C. 114: 72 L. J. Ch. 402: 88 L. T. 244: 51 W. R. 513: 8 Com. Cas. 142 ...135, 136, 144

PAGE

Stebbing v. Spicer, (1849) 8 C. B. 827 : 19 L. J. C. P. 24 : 14 L. T. O. S. 253 : 137 E. R. 733 ... 38
Stedman v. Gooch, (1793) 1 Esp. 4, 5 ... 534
Steele v. M'Kinlay, (1880) 5 A. C. 754, 770, 778 : 43 L. T. 358 : 29 W. R. 17 (H. L.) 55, 86, 91, 168, 169, 170, 182, 243, 372
Stephen v. Stephen, 9 Cal. 901 : 13 C. L. R. 430 ... 109
Stephens v. Graham, 7 Serg. & R. 505 (Amer) ... 372
Sterne v. Beck, (1863) 32 L. J. Ch. 682 ... 566
Stevens v. Jackson, (1815) 4 Camp. 164 : 1 Marsh. 469 : 6 Taunt. 106 : 2 Rose. 234 ... 111
Stevenson v. Brown, (1902) 18 T. L. R. 258 ... 298
Stewart v. Kennett, (1809) 2 Camp. 177 : 11 R. R. 690 .. 394, 395
——v. Lee : (1828) 1 M & M. 158 .. 460
——E v. G. W. Mercado, 1 Bur. L. J. 40 ... 466
Stocken v. Collin, (1841) 7 M. & W. 515 : 10 L. J. Ex. 227 : 9 C & P. 653 : H & W. 84 : 151 E. R. 870 : 56 R. R. 785 ... 403
Stockman v. Parr, (1843 11 M. & W. 809 : 12 L. J. Ex. 415 : 1 C & K 41 : 7 Jur 886 : 152 E R. 1031 : 63 R. R. 780 ... 405
Stoessiger v. S. E. Ry. Co. (1854) 3 E. & B. 549 : 23 L.J.Q.B, 293 : 2 C. L. R. 1595 : 18 Jur. 605 : 2 W. R. 375 : 118 E. R. 1248 : 97 R R. 644 ... 45, 96
Stone v. Metcalfe, (1815) 4 Camp. 217 : 1 Stark 53 ... 528, 529
Stott v. Fairlamb, (1883) 52 L. J. Q. B. 420 : 48 L. T 574 : reversed on appeal 53 L. J Q. B. 47 : 49 L. T. 525 : 32 W. R. 354 ... 523, 529
Stracey & Co. v. Wallis, 106 L. T. 541 ... 120
Straker v. Graham, (1839 4 M. & W. 721 : 7 Dow. P C. 223 : I. H. & H 449 : 8 L. J Ex. 86 : 150 E. R. 1612 : 51 R. R. 783 282, 497
Strange v Wigney, (1830) 6 Bing. 677 ... 358
Stratton v. Mathews, (1848) 3 Ex. 48 : 6 D. & L. 229 : 18 L. J Ex. 5 : 12 Jur. 924 : 154 E. R. 750 ... 387
Strickland v. Symons, (1884) 26 Ch. D. 245 ... 547
Strong v. Foster, (1855 25 L. J. C. P 106 : 17 C B. 201 : 4 W. R. 151 : 104 R. R. 653 : 139 E. R. 1047 ... 205
Studdy v. Beesty, (1889) 60 L. T. N. S. 646 (C. A.) ... 413
Sturdy v. Henderson, (1821) 4 B & Ald. 592 : 106 E R. 1053 ... 283
Subba v. Rama, 40 Mad. 775 ; 5 L. W 261 : 37 I C. 892 ... 240
Subba narayana Vathiyar v. Ramasami Aiyar, 30 Mad 88, 91 (F.B.) : 16 M. L. J. 508 : 1 M. L. T. 377 on appeal from 28 Mad. 244 10, 11, 58, 80, 104, 126, 127, 545
Subbanna v. Subbarayadu, 50 M. L. J. 125 : 25 L. W. (Sh. N.) 60 : (1926) Mad. 390 : 92 I. C. 805, app. from 47 M. L. J. 765 : (1925) Mad. 371 : 85 I. C. 457 142, 144, 145, 547
Subbaraya v. Devandra, 7 Mad. 301 ... 260
Subbaraya Chetty v. Pappathi Ammal, (1918) M. W. N. 289 ... 116
Subbaraya v. Thengavelu, 45 M. L. J 44 ... 131
Subramania v Chokkalinga, 44 M. L. J 206 : 46 Mad. 415 :

PAGE

(1923) M. W. N. 91: 17 L. W. 314: (1923) Mad. 317: 72 I.C. 189 ... 57, 61, 71, 84, 551
Subramania Aiyer v Subban Chettiar, 21 L. W. 696: 90 I. C 1047: (1925) Mad. 1130 ... 59, 60, 61, 544
——v. Gopala, 33 Mad. 308 ... 189
Subramania v. Maung Po Tha, 11 I. C. 851 ... 173, 549
——v. Narayanasami, 22 L. W. 445: (1925) M. W. N. 601: 90 I. C. 102): (1925) Mad 1240 ... 524
Subramania v. Subramania, 31 Mad. 250: 8 M. L. T 278: 18 M L J. 245 ... 335
——v. Velu, 49 M. L. J. 717: 22 L. W 749: (1926) Mad. 249 ... 547
——Ayan v. Krishna Ayyan, 23 Mad. 137 ... 383
——Ayyar v. Arumuga Chetty, 26 Mad. 330 ... 547
——Chetty v. Alagappa Chetty, 30 Mad. 441, 443: 17 M. L. J. 414 ... 60, 74, 180, 230, 238, 289, 327
——v. Muthia Chetty, 35 Mad. 639 ... 534, 535, 536
——v. Rukku Servai, 20 Mad 232 ... 537, 543
Subramania Tevan v. Arunachela Tevan, 18 M. L. J. 186 ... 58, 542
Subrao Manjaya v Sitaram Sivaram Bhat, 2 Bom, L. R. 891 ... 203, 248
Subbaraya Aiyar v. Vaithinatha Iyer, 33 Mad. 115 ... 541
Subraya Pillai v. Subraya Mudali, 4 M. H. C. R. 14 ... 511
Suddev v. Union Bank, (1876) 1 Otto Sub-Court U. S. 406 ... 504
Sudhir Chandra v. Gobinda Chandra, 45 Cal. 538: 21 C. W. N. 1043: 41 I C 503 ... 596
Sudisht v. Sheobart Koer, 7 Cal. 245: 8 I. A 39: 11 C. L. R 113 ... 256
Suffel v. Bank of England, (1882) 9 Q. B. D 555, 572, 574: 51 L. J. Q. B. 401: 47 L. T. 146: 30 W. R. 932: 46 J. P. 500, reversing (1881) 7 Q B. D. 270 ... 372, 377, 378
Sugon Chand Sivdas v. Mulchand Joharimal, 12 Bom. H. C. R. 113: 1 Bom. 23 ... 20
Sugappa v. Govindappa, 12 M. L. J. 351 ... 40, 78, 80, 229, 597
Sukdedoss v. Govindoss, 51 Mad. 96: 54 M. L. J. 130; 30 Bom. L. R. 238: 27 L. W. 453: 26 A. L J. 484: 47 C. L. J. 144: (1928) Mad. 30 (P. C.) ... 261
Sukh Lal v. Eastern Bank, 46 Cal. 584 ... 320, 350, 412, 508
Sulleman Hussein v. The New Oriental Bank Corporation Ltd, 15 Bom. 267, 279 ... 91, 355, 364
Sully v. Frean, (1854) 10 Ex. 535: 156 E. R. 551 ... 209
Sundar v. Bhagoo, 62 I. C. 7 (Pat.) ... 260
——v. Khushi Ram, (1927) Lah. 864; 28 P. L. R. 295: 102 I. C. 42: 9 Lah L. J. 254 ... 462, 463, 466
Sundaram Chetti v. Damodaram, (1924) M. W. N. 529 ... 204, 222
Sundar Das v Peoples Bank of India, 169 P. L R. 1912: 16 I. C 834 ... 584
Sundar Dass v. Puransingh, 11 P. W. R. 1922 ... 539
Sundarammal v. Subramania Chettiar, 29 M. L. J. 236: 30 I. C. 971 ... 463

PAGE

Sundaresa Gurukkal v. Sambasiva Iyer, 2 L. W. 188 ... 140, 143
Sundaresan Chettiar v. Viswanatha Pandara, 45 Mad. 703 ... 547
Suppai Goundan v. Kandasami Goundan, 19 L. W. 560 : (1924) Mad. 617 : 80 I. C. 567 ... 86, 148, 240
Sundar Khatick v. Mahadeo. 23 A. L. J. 253 : 87 I C. 796 (2) ... 78, 375
Suppan v. Sadaya, 99 I. C 753 : (1927) Mad. 1146 ... 204, 206
Suraj Kumar v. Baldeo Das, 48 P. R. 1913 : 18 I. C 701 ... 280, 290
Surajmal v. Bank of Behar, 60 I. C. 746 (Pat) ... 31
Surajman Prasad v. Sadanand, 11 Pat. 616 ... 362
Surendra Nath v. Atul Chrndra Roy, 34 Cal 892 ... 141
Surji Mull v. Hudson, 24 Mad. 259 ... 584
Surjug Singh v. Deosaran, (1930) Pat. 313 : 123 I. C. 395 (Pat.) : 11 P. L. T. 255 ... 59, 542
Suryanarayana v. Munisami, (1919) M. W. N. 185 ... 93
Suse v. Pompe, (1860) 8 C. B. N. S. 538 : 30 L. J. C. P. 75 : 9 W. R. 15 : 7 Jur. (N. S.) 166 : 3 L. T. 17 : 141 E. R. 1276 ... 456, 458
Sussex Peerage case, (1844) 11 Cl. & F. 85 : 8 E. R. 1034 ... 512
Sutters v. Briggs, (1922) 1 A. C. 1, 12 49, 66, 248, 478, 494
Sutton, *Ex parte*, (1788) 2 Cox 84 : 30 E. R. 39 ... 137
——v. Toomer, (1827) 7 B. & C. 416 : 1 Mar. Ry. 125 : 108 E. R. 778 283, 375, 383, 535
Swaminatha Iyer v. Srinivasa Aiyar, 32 M. L. J. 259 : 5 L. W. 323 : 38 I. C. 172 : (1917) M. W. N. 278 132, 140, 141, 143, 547
Swan, *Ex parte, In re* Overend Gurney & Co. (1868) L. R. 6. Eq. 344 : 18 L. T 230 : 16 W. R. 560 446, 449, 451, 452
——v. North British Australasian Co., (1863) 2 H. & C. 175 : 32 L. J. Ex. 273 : 9 E. R. 136 : 10 Jur. (N, S.) 102 : 11 W. R. 862 : 159 E. R. 73 ... 67, 97
——v. Steele, (1806) 7 East 210 : 3 Smith 199 : 8 R. R. 618 : 10 E. R. 80 130
Swee Long & Co., v. A. T. Chettiyar Firm (1927) Rang. 159 ... 572
Sweeting v. Fowler, (1815) 1 Stark. 106 ... 38
——v. Halse, (1829) 9 B. & C. 365 : 4 Man. & Ry. 287 : 109 E. R. 136 ... 343
Swinburne, *In re*, Sutton v. Feathely, (1926) 1 Ch. 38, 47 162, 201, 252
Swinyard v. Bowes, (1816) 5 M. & S. 62 : 105 E. R. 974 : 17 R. R. 274 ... 393, 401, 538
Syed Hussain v. Babu Durga Charn, 9 O. C. 315 ... 462
Syed Sikandar v. Ramchand, 71 I. C. 968 ... 28
Syud Ali v. Gopal Das, 13 W. R. 420 ... 10, 398

T

Talbot v. Von Boris, (1911) 1 K. B. 854 : 80 L. J. K B. 661 : 104 L. T. 524 : 55 S. J. 290 : 27 T. L. R. 266 ... 99, 256, 467
Tammi Reddi v. Gangi Reddi, 45 Mad. 281 (P. C.) ... 131
Tanikkachala Mudliar v. Alamelu Ammal, 16 M. L. T. 26 ... 132
Tanugunta Brahmayya v. Sangam Rami Reddi, 16 M. L. T. 185 ... 376

PAGE

T. A. R. A. R. M. Chetty Firm v. Soloman, 13 Bur. L. T. 37 : 55 I. C. 718 ... 229
Tatam v. Haslar, (1889) 23 Q. B. D. 345 : 58 L. J. Q. B 432 : 5 T. L. R. 593 : 38 W. R. 109 ... 266, 467, 468
Tate v. Wilbert, (1793) 2 Ves. 111 : 4 Br. C. C. 286 : 30 E. R. 548 : 2 R. R 175 ... 162
Tayaramma v. Sitaramaswami Naidu. 23 Mad. 613 : 10 M. L. J. 214 258
Taylor v. Booth, (1824) 1 C. & P. 286 ... 35
——v. Croker, 1802) 4 Esp. 186 ... 112, 473
——v. Jones, (1809) 2 Camp. 105 : 11 R R. 677 ... 314
Temple v. Pullen, (1853) 8 Exch. 389 : 22 L. J. Ex. 151 : 155 E R. 1399 : 91 R. R. 546 ... 95, 98
Terry v. Parker, (1837) 6 A. & E. 502 : 6 L. J. K. B. 249 : 45 R. R. 549 ... 316, 318
Texas Company v. Bombay Banking Co., 44 Bom. 139 (P. C.) ... 71
Thackray v. Blackett, (1812) 3 Camp 164 : 13 R. R. 783 ... 212, 310
Thairlwall v. Great Northern Railway, (1910) 2 K. B 509 : 79 L. J K. B. 924 : 103 L. T. 185 ; 26 T. L R. 55 : 54 S. J. 652. 212, 218
Thaith Oottathil Kutti Ammu v. Purushotham, 9 M. L. T. 120 ... 128, 130
Thakar Singh v. Ishar Singh, 113 P. L. R. 1911 : 10 I. C. 847 ... 336
Thakari Mulla v. Ram Thakal Tewari, 52 All. 489 : (1930) A. L. J. 559 : 127 I. C. 527 : (1931) All. 57 (1) ... 585
Thakur Das v. Fatteh Mull, 7, B. L. R 275 : 16 W. R. 3 (O.C.) 19, 21, 22, 69, 263
——Din v. The Oudh Commercial Bank Ltd., 57 I. C. 304 : 23 O. C. 91 ... 311, 462
Thakursey Hansraj v. Kishen Das Rewachand, 76 I. C. 282 : (1925) Sind. 9 36, 78, 86, 243
Thankammal v. Kunnammal, 37 M. L. J. 369 : 53 I. C. 878 ... 234, 545
Thasi Muthukannu v. Shanmuga Velu, 28 Mad. 413 : 15 M. L. J. 286 ... 258
Tata Industrial Bank Ltd v. Abdul Husein, 25 Bom. L. R. 1296 : (1924) Bom. 144 ... 570
The Parchim, (1918) A. C. 157 ... 511
Thicknesse v. Bromilow, (1832) 2 C. & J. 425 : 37 R. R. 752 : 149 E. R 180 ... 130
Thiedemann v. Goldschmidt, (1859) 1 De G. F. & J. 4 : 1 L. T. 50 : 8 W R. 14 ... 165
Thikam Das Javahirdas v. Gango Kom Mathur Das, 11 Bom. H. C. R. 203 ... 380
Thimbleby v. Barrow, (1838) 3 M. & W. 210: 7 L. J. Ex. 128: 150 E R 1119 ... 531
Thiruvengadasami v. Veera, 30 I. C. 778 (Mad.) ... 140, 143
Thomas v. Fenton, (1847) 16 L. J. Q. B. 362: 5 D. & L. 28: 11 Jur 633 2 B. C. R 68: 79 R. R. 831 ... 387
——v, Hethorn, (1824) 2 B. & C. 477: 3 D. & R. 647: 107 E. R. 461 330

PAGE

Thomson v. Frere. (1808) 10 East. 411: 103. E. R. 834: 10 R. R. 341 ... 241
——v. Clydesdale Bank Ltd., (1893) A. C. 282 ... 157, 491
——v. Percival, (1834) 5 B & Ad, 925: 3 N. & M. 167: 3 L. J. K. B. 98: 110 E. R. 1033: 53 R. R. 187 ... 535, 539
——v. Universal Salvage Co., (1848) 1 Ex. 694: 17 L. J. Ex. 118: 154 E. R 295 ... 118, 130
Thorappa v. Umed Ali, 25 Bom. L. R. 604: 87 I. C. 226: (1924) Bom. 205 217, 218, 263, 326, 332, 355
Thornton v. Maynand, (1875) L. R. 16 C. P. 695: 44 L. J. C. P. 328 33 L. T 433 ... 331
Thorpe v. Booth, (1826) Ry. & M. 388 ... 563
——v. Coombe, (1826) 8 Dow. & R. 347 ... 563
Tidmarsh v. Grover, (1813) 1 M. & S. 735: 105 E. R. 274 ... 374
Tikam Das v. Ganga Kom Mathura Das, 11 Bom. H. C. R. 203 ... 380
Timmins v. Gibbins, (1852) 18 Q. B 722: 21 L. J Q. B. 403: 17 Jur. 378: 88 R. R. 778 ... 228
Tindal v. Brown, (1786 1 T. R. 167 (affirmed 2 T. R. 186) 99 E. R. 1033: 1 R. R. 171 ... 394, 404, 435
Tinson v Francis, (1807) 1 Camp. 19: 10 R. R. 617 ... 268
Tipparah Loan Office v. Gour Chundra, 2 C. L. R. 349 ... 334
Tirath Ram v. Sirdar Autar Singh, 32 P. L. R. 1914: 8 P. W. R. 1914: 22 I C. 861 ... 78, 464
Tirumangal v. Ramaswami Iyengar, 1 M. H. C. R. 214 ... 114
Tirupathi Goundan v. Rama Reddi, 21 Mad. 49: 7 M. L. J. 291 ... 28, 29
Tootell, *Ex parte*, (1798) 4 Ves. Jour. 372: 31 E, K. 189 ... 43
Torrance v. Bank of British North America, (1873) L. R. 5 P. C. 246, 252: 29 L. T. 109: 21 W. R. 529 ... 188, 530
Tourret v. Cripps, (1879) 48 L. J. Ch. 567: 27 W. R. 706 ... 128
Trapp v. Spearman, (1800) 3 Esp. 57 ... 371, 374
Treuttel v. Barandon, (1817) 8 Taunt. 100 : 1 Moore C. P 543 : 129 E. R. 320 : 19 R. R. 472 ... 238
Trickey v, Larne, (1840) 6 M. & W. 278 : 6 Dow. P. C. 174 : 9 L. J. Ex. 141 : 151 E. R. 414 ... 210
Triggs v. Newnham, (1825) 1 C. & P. 631 : 10 Moore C. P. 249 : 3 L. J. (O. S.) C. P. 119 : 28 R. R. 678 ... 292
Trikam Damodhar v. Lala Amir Chand, 8 B. H. C. R. 131 (A. C. J.) ... 259, 260
Trimbey v. Vignier, (1834) 1 Bing N. C. 151 : 4 Moor. & S. 659 : 6 C. & P. 25 : 3 L. J. C. P. 346 : 131 E. R. 1075 : 41 R. R. 578. 424, 506, 507
Trueman v, Loder, (1840) 11 A. &. E. 589, 594 : 9 L. J. Q. B. 165 : 113 E. R. 539 ... 128
Tulsi Ram v. Gur Dayal, 50 L. J. 445 : 48 I. C. 423 ... 350
Tulshi Sahu v. Narasingram, 12 C. L. R. 333 ... 398
Tuns Hlaing v. Makha Bhu, (1929) Rang. 270 ... 585
Turner v. Leech, (1821) 4 B & Ald. 451 : 106 E. R. 1002 ... 311, 394, 413

PAGE

Turner v. Samson, (1876) 2 Q. B. D. 23 ; 46 L J. Q B 167 : 35 L T. 537 : 25 W. R. 240 ... 319
——v. Stones, (1843) 1 Dow. & L. 122 : notes 131 : 12 L. J. Q B. 303 : 7 Jur. 745 : 67 R. R. 846 : 1 L. T. 26) ... 310. 319, 401
Turquand v. Board of Trade, (1886) 11 A. C. 286 ... 10
Twibbel v. London Suburban Bank, (1869) W. N. 127 ... 161, 358
Twogood, *Ex parte*, (1812) 19 Ves. 229: 34 E. R. 893: 12 R R, 178... 63, 222
Tye v. Gwyne, (1810) 2 Camp. 346 : 170 E. R. 1179 ... 210

U

Udayar Pillai v. Muthia, 7 M. L J. 231 ... 40,78, 229
Udho Ram. v, Hemraj, A. I. R., (1924) Lah. 198 : 72 I. C 777 214, 287, 288, 306, 3 8. 310, 319
Udit Upadhya v. Bhawani Din, 27 All 84 ... 28, 29
Ulagappa Chetty v. Ramanathan Chetty, 3 L W. 171 ... 230, 542
Ulafat Rai v. Gouri Shankar, 33 All. 657 ... 112
Umedmull v. Mani Ram Agarwalla, (1929) Cal. 399: 33 C. W. N. 275 ... 566, 567
Underwood v. Bank of Liverpool, (1924) 1 K. B. 775 (C. A.) (1924) W. N. 55: 40 T. L. R. 302: 93 L. J. K. B. 690: 131 L. T. 271: 29 Com. Cas. 182 ... 476, 485, 487
——A. L. Ltd. v. Barclays Bank, (1924) 1 K. B. 799 ... 494
Union Bank of Australia, Ltd , v. Murray Aynsley, (1898) A. C. 693 ... 157
——Indian Sugar Mills Coy , *Re* v. Brij Lal, 49 All. 728: 25 A. L. J. 450: 102 I. C 756 : (1927) All 426: ... 464
Upendra Nath Banerjee v. Umeschandra Banerjee, 15 C.W.N. 375. 596
Urquhart v. Macpherson, (1878) 3 A C. 831 ... 257
Usher v. Dauncey, (1814) 4 Camp. 97: (1814) 4 M. & S. 94 ... 97, 98
Uthira v. Muthu, (1927) Mad. 68 ... 222

V

Vaidyanatha Ayyar v Chinnasami Naick, 17 Mad. 108 ... 543. 544
Vagliano Brothers v. Bank of England, (1889) 23 Q. B. D. 243: 58 L. J. Q. B. 357: 37 W. R 640 ... 262, 265
Valiappa Ravuthan v. Mahomed Kasim, 5 Mad. 166 ... 595
Valjee v. Harsook, 62 M. L. J. 639: 35 L. W. 269: (1932) Mad. 323 ... 88, 173
Valliappa Chetty v. Subramanian Chetty, 26 M. L. J. 494: 15 M. L. T. 342: 23 I. C. 431 ... 103, 562
Van Dieman's Land Bank v. Victoria Bank, (1871) L R. 3 C. P. 526 ... 55
Van Ingen v. Dhunna Lall, 5 Mad. 138, 110 ... 71
Vance v. Lowther, (1870) 1 Ex. D. 176: 45 L. J. Q B. 200: 34 L T. 286: 24 W. R. 372: 40 J. P. 232 ... 372, 373

PAGE

Vandewall v. Tyrell, (1827) M. & M. 87 ... 446, 450
Vanwart v. Woolley, (1814) 3 B. & C. 439: 5 D. & R. 374: 3 L. J. K. B. (O. S.) 51: 107 E. R. 797 ... 401
Veeraiyan Chettiar v. Ponnusami Chettiar, 36 Mad. 362 .. 60, 61, 543
Veerappa Chetty v. Muthurama, 12 L. W. 12: 58 I. C. 508 15, 17, 180, 232
——v. Vellayan Ambalam, 10 L. W. 39: 52 I. C. 370. (1910) M. W. N. 780 11, 149, 150, 151, 277, 469
Velchann Ganesh v. Bhagwan Das, 32 Bom. L. R. 1390: (1931) Bom. 74 ... 694
Veliet Dos v. Bunarussee Roy, (1864) W. R. 262 ... 74, 327
Vellian v. Woomidy. 29 I. C. 760 ... 186, 347
Venkatachalapathi v. Ramakrishnayya, (1930) Mad. 168: 123 I. C. 358 ... 129, 144, 595
Venables v. Baring Bros. & Co., (1892) 3 Ch. 527: 61 L. J Ch. 609: 67 L. T. 110: 40 W. R. 699: 36 Sol. Jo. 556 ... 67
Venkanna v. Parasuram, 53 Mad. 137: 120 I. C. 879 ... 597
Venkata Raghavalu Chetty v. Sabapathy Chetty, (1911) 2 M. W. N. 253 .. 462
Venkata Rama v. Raja of Gadwal, 53 Mad. 968: (1930) Mad. 1004. 580
Venkatacharlu v. Venkataramnnjulu Naidu, 5 M L J. 241, 243 ... 567
Venkatadri v. Lakshminarasimha, 21 M. L. J. 80: 8 I. C. 33: 8 M. L. T. 449: (1910) M. W. N. 824 ... 80, 230
Venkatakrishniah v. Atyam Subbaiah, 41 M. L. J. 554 ... 234
Venkatakrishnayya v. Lakshminarayana, 32 Mad. 185 (F. B.) ... 259
Venkataram v. Shankara Narayan, 19 Bom. L. R. 862: 42 I. C. 947. 577, 578
——v. Chella Pillai, 40 M. L. J. 479 ... 598
——v. Krishnaswami, 35 L. W. 755 ... 229
Venkataramana Iyer v. Narasinga Rao, 38 Mad. 134 ... 123
Venkataramana v Venkayya, 14 Mad. 377 ... 543
Venkatarami Reddy v. Sri Maharaja, 59 M. L. J. 548: 53 Mad. 968: (1930) Mad. 1004 ... 37, 47, 504
Venkataramiah v. Official Assignee of Madras, 33 Mad. 196 ... 66, 340
Venkataramayya v. Nurse, 49 Mad 815: (1927) Mad. 34 ... 570
Venkatasubbamma v. Ramayya, 59 I. A. 112 ... 145
Venkatesh Prabhu v. Bava Subraya, 15 Bom. 44 ... 377
——v. Ramanatha, (1929) Mad. 622: 119 I. C. 472 ... 598
Venkatanarayanan v Venkatanarasimha, (1913) M. W, N. 1005: 14 M. L. T. 502 ... 29, 139, 140
Venku v. Sitaram, 29 Bom. 82: 6 Bom. L. R. 841 ... 27, 31 578
Venna Takayya v. Gangayya, 53 M. L. J. 562, (1927) M. W. N. 587: 26 L. W. 453: 105 I. C. 789: (1927) Mad. 965 ... 566
Vernon v. Hankey, (1787) 2 T. R. 113: 1. R. R. 444: 100 E. R. 62. 163
——Allen v. Meera, (1882) 7 A. C. 172: ... 584
Vinayak Govind and Narayan v. Babaji, 4 Bom. 230 ... 30
Vincent v. Horlock, (1808) 1 Camp. 442: 10 R. R. 724 ... 231
Vindamuni v. Kamaka, 5 M. L. T, 300 ... 248

PAGE

Viden v. Hughes, (1905) 1 K. B. 795 : 74 L. J. K. B. 410 : 21 T. L. R. 324 : 49 Sol. Jo. 351 : 53 W. R. 429 ... 198
Vishnu v. Achut, 105 I. C. 780 : (1928) Nag. 54 ... 58, 59
——v. Ganesh, 45 Bom. 1155: 23 Bom. L. R. 488 : 63 I. C. 673 ... 524
——v. Kashinath, 11 Bom. 174 ... 316
Visvanath v. Sadashiv, 14 Nag L J. 141 : ... 566
Viswasankar Naarayana v. Kasi, 21 L W. 25 ... 234
Vithal Das v. Indra Vellu, 29 I. C. 936 : 8 Bur. L. T. 161 : 8 L. B. R. 202 ... 251, 339
——Rao v. Vithal Rao, 25 Bom. L. R. 151 : (1923) Bom. 244 : 72 I. C. 242 ... 236, 545
Vithu v. Govinda, 22 Bom. 321, 327 (F. B.) ... 10
Voleti Sreeramulu v. Venkata Reddy, 8 M. L. T. 247 ... 58, 541
Volkart Bros. v. Vettivelu Nadar, 11 Mad. 459 ... 19
Vonlintzgy v. Narayan Singh, 6 B. L. R. (App.) 64 ... 556
Vyravan v. Official Assignee, (1932) M. W. N. 969 ... 182, 183, 184

W

Wa Wathier v. Wilson, (1912) 28 T. L. R. 239 ... 111
Waghela Rajsanji v. Sheikh Masludin, 11 Bom 551 (P C.) ... 141
Wahidunnessa v. Surgadass, 5 Cal. 39 .. 96
Wain v. Bailey, (1839) 10 A. & E. 616 : 2 P. & D. 507 : 113 E. R. 234 : 50 R. R. 514 ... 212, 339, 537
Waithmann v. Elsee, (1843) 1 Car. & K. 35 ... 28, 29
Walker v. Barnes, (1813) 5 Taunt. 240, 778 : 1 Marsh 36 : 128 E. R. 681, 898 : 15 R. R. 655 ... 338
——v. Jones, (1865) L. R I. P. C. 50: 35 L. J. P. C. 30 : 3 Moore P C. C. 397 : 12 Jur. (N. S) 381 : 14 L. T. 686 : 14 W. R. 484 : 16 E. R. 151 ... 530
——v. Macdonald, (1848) 2 Ex. 527 : 17 L. J. Ex 373 : 154 E R. 600 ... 242, 249
——v. Manchester & Liverpool Banking Co., 108 L. T. 728 ... 265, 362
——v. Nevill, (1865) 34 L. J. Ex. 73 ... 531
——v. Roberts, (1842) Car. & Mar. 590 ... 29
Wallace v. Hardacre, (1807) 1 Camp 45 : 10 R. R. 629 ... 116
Walmseley v. Cooper, (1839) 11 A. & E. 216 : 10 L. J. Q B. 49 : 3 P. & D 149 : 113 E. R. 398 : 52 R. R. 324 ... 347
Walpole v. Pulteney, (1799) cited in 1 Dougl. 249: 99 E R. 162 ... 346
Walter v. Cubley, (1833) 3 L. J. Ex 2 : 2 Cr & M. 151 : 4 Tyr. 87 : 39 R. R. 739: 149 E. R 711 ... 374
——v. Haynes, (1824) 1 Ry. & Moo. 149 ... 402
——v. James, (1871) L. R. 6 Ex. 124, 127 : 40 L J. Ex. 104 : 24 L. J. 188 : 19 W. R. 472 ... 328
Walter Mitchell v. A. K. Tennent, 52 Cal. 677, 682 : (1925) Cal. 1007 ... 51, 258, 525
Walters v. Neary, (1904) 21 T. L. R. 146 ... 85, 229

PAGE

Walton v. Hastings, (1815) 4 Camp. 223 : 1 Stark 215 : 2 Chit 121 ... 373, 586
——v. Mascall, (1814) 13 M. & W. 452 : 153 E. R. 188 : 67 R. R 516 : 2 Dow and L 410 : 14 L. J. Ex 54 : 4 L. T. 158 ... 322, 393
Walwyn v. S T. Quintin, (1797) 1 Bos. & P. 652 : 2 Esp. 515 : 126 E. R 1115 ... 329
Wanthier v. Wilson, (1912) 28 T L. R. 239 ... 111, 184
Ward v. Evans, (1703) 2 Ld. Raym. 928 : 6 Modern 36 : 92 E, R 120 ... 227
——v. Oxford Worcester Etc. Ry. Co., (1852) 2 De. G. M. & G. 750 : 95 L. J. Ch 905 : 22 L. T. O. S. 13 : 1 W. R. 9 : 42 E. R. 1065 .. 310
Warrington v. Early, (1853) 2 E. & B. 763 : 25 L. J. Q. B 47 : 18 Jur. 42 : 2 C. L. R. 398 : 4 W. R. 78 : 118 E. R. 953 : 95 R. R. 789 ... 47, 375
——v. Furbor, (1807) 8 East. 242 : 6 Esp. 89 : 103 E. R. 334 ... 309, 393
Warwick v. Bruce, (1813) 2 M. & S. 205 : 105 E R. 359 : 14 R. R 634 ... 112
——v. Rogers, (1843) 5 M. & G. 340 : 12 L. J. C. P. 113 : 6 Scott N R 1 : 134 E. R. 505 : 63 R. R. 292 ... 285, 323, 343
Watkin v. Lamb, (1901) 85 L. T. 483 : 17 T. L. R. 777 ... 98, 99
Watkins v. Maul, (1820) 2 Jac & W. 237 : 37 E. R. 618 86, 146, 229, 552
——v. Vince (1818) 2 Stark 368 ... 127
Watson v. Evans, (1862) 1 H. & C. 162 : 32 L. J. Ex. 137 : 158 E. R 1050 ... 38
Webb v Fairmanner, (1838) 3 M. & W. 473 : 6 D. P. C 549 : 7 L. J Ex. 140 : 2 Jur. 397 : 150 E. R. 1231 ... 106
——v. Hewith, (1857) 3 K. & J. 438 : 112 R. R. 224 ... 190
Webb Hale & Co. v. Alexandria Water Co., (1905) 93 L. T. 339... 12
——v. Spicer, (1849) 13 Q. B. 894 : 19 L. J Q. B. 34 : 116 E: R. 1505 : 7 D. & L. 324 : 14 Jur 33 : 78 R. R 540 ... 529
Webber v. Maddocks, 1811) 3 Camp. 1 ... 379
Wedlake v. Hurley, (1830) Lloyd & Welsly 330 : I. C & J 83 : 35 R R. 668 : 148 E. R. 1344 ... 238
Wegerloffee v. Keene, (1719) 1 Stra 214 : 93 E. R. 480 ... 367
Wegg Prosser v. Evans, (1895) 1 Q. B. 108 : 64 L. J Q. B. 1 : 72 L. T. 8 : 43 W. R. 66 : 11 T. L. R 12 : 39 Soc. Jo. 26 : 9 R. R. 830 ... 538
Weinholt v. Spritta, (1813) 3 Camp. 376 ... 161
Wess Bihaller v Firm of Habibhoy Gangji, 120 I. C. 528 ; ... 555, 556
Wellard v. Moss, (1823) 1 Bing, 134 .. 579
Wells v. Girling 1819) 4 Moore C. P. 78 : 1 B. & B 447 : 129 E. R. 795 ... 247
West London Bank v. Kitson, (1883) 13 Q. B. D 360 : 53 L. J. Q. B. 345 : 50 L. J. 656 : 32 W. R. 757 ... 134, 144
Westminster Bank v. Hilton, (H L.) (1926) W. N. 332 : 43 T. L. R. 124 : 705 J. 1196 : 136 L. T. 315 ... 161, 358
Whatley v. Tricker, (1807) 1 Camp. 35 ... 346

PAGE

Wheatley v, Smithers, (1907) 2 K. B 684 : 76 L. J. K. B. 900
97 L. T. 418 : 51 Sol J. 551 ... 119, 130
——v. Williams, (1836) 1 M. & W. 533 : 2 Gale 140 :
5 L. J Ex. 237 : 150 E. R 546 ... 27
Wheeler v. Young, (1897) 13 T. L. R. 468 ... 351
Whistler v Forster, (1863) 14 C. B. N. S. 248 : 32 L. J. C. P. 161 :
8 L. T. 317 : 11 W. R. 48 : 143 E. R. 441 ... 51, 71, 224
Whitker, *Re*, (1889) 42 Ch D. 119 (C. A.) : 58 L. J. Ch 487 :
61 L. T. 102 : 37 W. R. 673 : 5 T. L. R. 424 65, 201, 218, 221
Whitaker v. Bank of England, (1835) 1 Cr. M. & R. 744 :
1 Gale 54 : 4 L. J. Ex. 57 : 5 Tyr. 268 : 6 C. & P. 700 :
149 E. R. 1280 : 40 R. R 713 .. 155, 293
White v. Bluett, (1853) 23 L. J. Ex. 36 : 22 L. T. O. S. 123 :
2 W. R. 75 : 2 C. L. R. 301 ... 345, 346
White v. North, (1849) 3 Ex. 689 : 18 L. J. Ex. 315 :
154 E. R 1022 ... 29
Whitehead v. Walker, (1842) 9 M & W. 506 : 5 Dow. N. S. 600 :
11 L. J. Ex. 168 : 152 E R. 214 : 60 R. R. 81 : 10 M. & W. 696 : 568
12 L. J. Ex. 28 : 7 Jur. 333 : 62 R. R. 728 : 152 E. R. 652 150, 266, 277, 549
Whiteman v. Sadler, (1910) A. C. 514 : 79 L. J. K, B. 1050 :
103 L. T. 296 : 54 Sol. J. 718 ... 16
Whitlock v. Underwood, (1823) 2 B. & C' 157 : 107 E. R. 342 ... 93
Wiffen v. Roberts, (1795) 1 Esp. 261 : 5 R. R. 737 . 103, 294, 458
Wild v. Simpson, (1919) 2 K. B 544 ... 259
Wilde v. Keep, (1834) 6 C. & P. 235 ... 128
——v. Sheridan, (1855) 21 L. J. Q. B. 260 : 16 Jur. 426 :
19 L. T. 126 ... 216
Wilders v. Stevens, (1846) 15 M. & W. 208 : 15 L J. Ex. 108 :
153 E. R. 825 : 71 R. R. 620 ... 180, 247
Wilkes v. Jacks, (1794) 1 Peake 267 ... 393
Wilkins v. Jadis, (1831) 5 B. & Ad 188 : 9 L. J. K. B. (O. S.) 173 ;
109 E. R. 1113 : 36 R. R. 540 . ... 280, 292, 309
Wilkinson v. Johnson, (1824) 3 B. & C. 428 : 5 D. & R. 403 :
3 L. J K. B (O. S.) 8 : 107 E. R. 762 :
27 R. R 393 323, 331, 343, 445, 452, 471
——v. Unwin, (1881) 7 Q. B. D. 636, 637 : 50 L. J. Q. B. 338 :
46 L. T. 123 : 29 W. R. 458 ... 180, 247
——v. Verity, (1871) L. R. 6 C. P. 236 ... 569
Willans v. Ayers, (1877) 3 A. C. 133, 146 ; 47 L. J. P. C. 1 :
37 L. T. 732. 55, 89, 90, 91, 456, 457
William Ewing & Co. v. The Dominion Bank, (1904) A. C. 806 ... 264
Williamson v. Bennett, (1810) 2 Camp 417 ... 29, 42
Williams v. Clarke, (1847) 16 M. &. W. 834 : 153 E. R. 1429 ... 180
——v. Colonial Bank, (1888) 38 Ch. D. 388 ... 80
——v. Germaine, (1827) 7 B. &. C. 468 ; 6 L. J. K. B. (O. S.) 90 :
1 Man. & R. 394 : 108 E. R. 797 : 31 R. R. 248 ... 105, 445, 447
——v Harrison, (1689) Carth. 160 : 90 E. R. 698 ... 110, 113

PAGE

Williams v. King, 20 I. C. 189 ... 187
——v. Smith, (1819) 2 B. & Ald. 496 : 106 E. R. 447 ... 436
——v. Thomas, (1806) 6 Esp. 18 N. P. ... 171
——v. Waring, (1823) 10 B & C. 2 : 8 L. J. K B (O. S) 7 : 5 Man. & R. 9 : L. & W. 48 : 199 E. R. 351 : 34 R. R. 306 ... 298
——Deacon & Co. v. Shadbolt, (1885) 1 Cab. & E 529 : 1 T. L. R. 417 ... 238
Williamson v. Johnson, (1823) 1 B. & C. 146 : 2 D. & R. 281 : 11 L. J K. B (O. S.) 65 : 107 E. R. 55 ... 38, 133
——v. Wafts, (1808) 1 Camp. 552 ... 110, 113
Willis v. Barret, (1816) 2 Stark. 29 ... 36, 38
Willison v. Patteson, (1817)7 Taunt. 440 : 2 Moore 495 : 129 E. R 423 : 18 R. R. 525 ... 115
Wilson, *Ex parte*, 1 Atk. 218 : 26 E. R. 140 ... 24
—— v. Barthrope, (1837) 2 M. & W. 863 : 6 L. J. Ex. 251 : 1 Jur. 949 : 150 E. R. 1008 ... 127
Winter v. Round, 1 M. H. C. R 202 ... 38, 216
Wirth v. Austen, (1874) L. R. 10 C. P. 689 : 32 L. T. 669 ... 316, 318
Wise v. Charlton, (1836) 4 A & E. 786 : 6 L J. K. B 80 : 6. N. & M. 364 : 2 H & W. 49 : 111 E. R. 979 : 43 R. R. 480 ... 27, 31
Witten Baker v. Galstaun, 36 C. L. J. 256 ... 11
Wittersheim v. Lady Carlisle, (1791) 1 H. Bl. 681 : 126 E. R. 360 ... 544
Wolverhampton Banking Co., *Ex parte*, Campbell, *In re*, (1884) 14 Q. B. D. 42 ... 162
Wood v. Brown, (1816) 1 Stark. 217 ... 415
Woodbridge v. Spooner, (1819) 3 B. & Ald. 233 : 1 Chitty 661 : 22 R. R. 365 : 106 E. R. 647 222, 523, 529
Wizarat v. Mohan Lal, 43 All. 38. ... 567
Woodcock v. Houldsworth, (1846) 16 M. & W. 124 : 16 L. T. Ex. 49 : 8 L. T. O. S. 215 : 153 E R. 1126 ... 403
Woodland v. Fear, (1857) 7 E. & B 519 : 3 Jur. N. S. 584 : 29 L. T. 106 : 26 L. J. Q. B. 202 : 5 W. R. 624 : 119 E. R. 1339 : 110 R. R. 707 ... 156
Woods v. Dean, (1862) 32 L J. Q. B. 1 : 3 B. & S. 101 : 7 L. T. 591 : 11 W. R. 22 : 122 E. R. 39 ... 415
Woodthorpe v Lawes, (1836) 2 M. & W. 109 : 2 Gale 193 : 6 L. J. Ex. 69 : 150 E. R. 690 ... 405
Woolf v. Hamilton, (1898) 2 Q. B. 337 (C. A.) : 67 L. J. Q. B. 917 : 79 L. T. 49 : 47 W. R. 70 : 14 T. L. R. 499 : 42 Sol. Jo. 633 ... 260
Woollatt v. Stanley, (1928) 138 L. T. 620 ... 371, 385
Woolsey v. Crawford, (1810) 2 Camp. 445 ... 456
Worley v. Harrison, (1835) 3 A. & E. 669 : 5 L. J K. B. 17 : 5 Nev. & M. 173 : 111 E. R. 568 : 42 R. R. 498 ... 43
Wright v. Inshaw, (1842) 1 Dow. (N. S.) 802 : 6 Jur. 857 ... 379
——v. Maidstone, (1885) 24 L J. Ch. 623 : 1 Kay & J. 701 : 1 Jur. N. S. 1013 : 3 W. R. 613 : 3 Eq. Rep. 946 : 25 L. T. 287 : 69 E. R. 642 ... 214, 288

PAGE

——v. Shaw Cross, (1819) 2 B. & Ald. 501 (note) : 106 E. R. 449 438
Wyld, *Ex parte*, (1860) 2 De. G. F. & J. 642 : 30 L. J. B. K. 10 : 3 L. T. 794 : 7 Jur. N. S. 294 : 9 W. R. 421 : 45 E. R. 770 ... 449
Wynne v. Calander, (1826) 1 Russ. 293 : 38 E. R. 113 ... 539

Y

Yado v. Behari Lal, 53 I. C. 242 (Nag.) ... 336
Yarlagadda Veeraraghava v. Gorantla Ramayya, 29 Mad. 111 : 15 M. L. J. 484 : ... 595
Yates, *Ex parte*, (1858) 2 De. G. & J. 191 : 4 Jur. N. S. 649 : 27 L. J. K. B. 9 : 44 E. R. 961 : 6 W. R. 178 ... 84
——v. Dalton, (1858) 28 L. J. Ex. 69 : 118 R. R. 896 ... 130
——v. Evans, (1892) 61 L. J. Q. B. 446 : 66 L. T. 532 : 56 J. P. 565 : 36 Sol. J. O. 274 ... 153
——v. Hoppe, (1850) 9 C. B. 541 ... 205
——v. Nash, (1860) 8 C. B. N. S. 581 : 29 L. J. C. P. 306 : 6 Jur. N. S. 1343 : 2 L. T. 430 : 8 W. R. 764 : 141 E. R. 1294 ... 47
——v. Terry, (1902) 1 K. B. 527 ... 163
Yeo Eng Pwa v. Chetty Firm, 5 L. B. R. 162 : 4 I. C. 293 (F. B.) ... 36, 577
Yglesias v. River Plate Bank, (1877) 3 C. P. D. 60, 65 : 8 L. T. 464 : 26 W. R. 843 ... 343, 344
Yinuganti China Venkatarayanim v. Kotagiri Venkatonarasimha, 14 M. L. T. 502 : (1913) M. W. N. 1005 127, 139, 143, 545
Yonge v. Toynbe, (1910) 1 K. B. 215 ... 136, 144
Yorkshire Banking Co. v. Beatson, (1880) 5 C. P. D. 109 : 49 L. J. P. 380 : 42 L. T. 455 : 28 W. R. 879 ... 126, 133, 171
Young v. Austen, (1869) L. R. 4 C. P. 553, 557 : 38 L. J. C. P. 233 20 L. T. 396 : 17 W. R. 706 ... 220, 523
——v. Cole, (1837) 3 Bing N. C. 724 : 6 L. J. C. P. 201 : 1 Jur. 22 : 132 E. R. 589 ... 226
——v. Glover, (1857) 3 Jur. (N. S.) 637 ... 54, 84
——v. Grote, (1827) 4 Bing. 253 : 12 Moore C. P. 484 : 5 L. J. C. P. (O. S.) 165 : 130 E. R. 764 : R. R. 552 254, 361, 384, 385

Z

Zamindar of Polavaram v. Maharaja of Pithapuram, 54 Mad. 163. 142
Zohrajan v. Rajan Bibi 48, P. R. 1915 : 28 I. C. 402 : 62 P. W. R. 1915 : 5 Lah. L. J. 198 ... 462
Zulfiker Ahmed v. Robert Elliot, 85 I. C. 423 : 1 Oudh & N. L. R. 1008 : (1925) Oudh. 486 ... 382

THE NEGOTIABLE INSTRUMENTS ACT

(ACT XXVI OF 1881)

[*Passed on the 9th December, 1881*]

Historical Memoir

STATEMENT OF REPEALS AND AMENDMENTS.

Section 2 Repealed	...	Act XII of 1891
„ 3 Amended	...	Act IV of 1914, Sec. 2 & Schedule
„ 7 Amended	...	Act II of 1885, Sec. 2
„ 9 Amended	...	Act VIII of 1919, Sec. 2
„ 13 Amended	...	Act VIII of 1919, Sec. 3
		Act V of 1914, Sec. 2
„ 16 Amended	...	Act V of 1914, Sec. 3
„ 45-A Inserted	...	Act II of 1885, Sec. 3
„ 48 Amended	...	Act VIII of 1919, Sec. 4
„ 61 New paragraph added	...	Act II of 1885, Sec. 4
„ 63 Amended	...	Act XII of 1921, Sec. 2
„ 64 New paragraph added	..	Act II of 1885, Sec. 4
„ 72 Amended	...	Act VI of 1897, Sec. 2
„ 75-A Inserted	...	Act XXV of 1920, Sec. 2
„ 75-A Amended	...	Act XII of 1921, Sec. 3
„ 80 Amended	...	Act XXX of 1926, Sec. 2
„ 83 Amended	...	Act XII of 1921, Sec. 2
„ 84 New section substituted	...	Act VI of 1897, Sec. 3
„ 85-A Inserted	...	Act XXV of 1930, Sec. 2
„ 101 New paragraph Added	...	Act II of 1885, Sec. 5
„ 104-A Inserted	...	Act II of 1885, Sec. 6
„ 108 Second paragraph repealed.		Act II of 1885, Sec. 7
„ 109 Amended	...	Act II of 1885, Sec. 8
„ 113 Amended	...	Act II of 1885, Sec. 9
„ 117 Amended	...	Act XXX of 1926, Sec. 3
„ 121 Amended	...	Act VIII of 1919, Sec. 5
„ 131 Amended	...	Act XVIII of 1922, Sec. 2
Chapter XVII Inserted	...	Act II of 1885, Sec. 10
Section 138 Amended	...	Act IV of 1914, Sec. 2 & Schedule
„ 139 Amended	...	Act IV of 1914, Sec. 2 & Schedule
Schedule Repealed	...	Act XII of 1891, (The first Sch.)

THE

NEGOTIABLE INSTRUMENTS ACT, 1881.

ACT XXVI OF 1881

(AS AMENDED UP-TO-DATE)

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
   Saving of usages relating to hundis, etc.
   Commencement.
2. [*Repealed.*]
3. Interpretation-clause.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. " Promissory note. "
5. " Bill of exchange. "
6. " Cheque. "
7. " Drawer. "
   " Drawee. "
   " Drawee in case of need. "
   " Acceptor. "
   " Acceptor for honour. "
   " Payee. "

SECTIONS.

8. " Holder. "
9. " Holder in due course. "
10. " Payment in due course. "
11. Inland instrument.
12. Foreign instrument.
13. " Negotiable instrument. "
14. Negotiation.
15. Indorsement.
16. Indorsement " in blank " and " in full."
" Indorsee. "
17. Ambiguous instruments.
18. Where amount is stated differently in figures and words.
19. Instruments payable on demand.
20. Inchoate stamped instruments.
21. " At sight. "
" On presentment. "
" After sight. "
22. " Maturity. "
Days of grace.
23. Calculating maturity of bill or note payable so many months after date or sight.
24. Calculating maturity of bill or note payable so many days after date or sight.
25. When day of maturity is a holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

26. Capacity to make, etc., promissory notes, etc.
Minor.
27. Agency.
28. Liability of agent signing.
29. Liability of legal representative signing.
30. Liability of drawer.
31. Liability of drawee of cheque.
32. Liability of maker of note and acceptor of bill.

SECTIONS.

33. Only drawee can be acceptor except in need or for honour.
34. Acceptance by several drawees not partners.
35. Liability of indorser.
36. Liability of prior parties to holder in due course.
37. Maker, drawer and acceptor principals.
38. Prior party a principal in respect of each subsequent party.
39. Suretyship.
40. Discharge of indorser's liability.
41. Acceptor bound, although indorsement forged.
42. Acceptance of bill drawn in fictitious name.
43. Negotiable instrument made, etc., without consideration.
44. Partial absence or failure of money-consideration.
45. Partial failure of consideration not consisting of money.
45-A. Holder's right to duplicate of lost bill.

CHAPTER IV.

OF NEGOTIATION

46. Delivery.
47. Negotiation by delivery.
48. Negotiation by indorsement.
49. Conversion of indorsement in blank into indorsement in full.
50. Effect of indorsement.
51. Who may negotiate.
52. Indorser who excludes his own liability or makes it conditional.
53. Holder deriving title from holder in due course.
54. Instrument indorsed in blank.
55. Conversion of indorsement in blank into indorsement in full.
56. Indorsement for part of sum due.
57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.
58. Instrument obtained by unlawful means or for unlawful consideration.

SECTIONS.

59. Instrument acquired after dishonour or when overdue. Accommodation note or bill.
60. Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. Presentment for acceptance.
62. Presentment of promissory note for sight.
63. Drawee's time for deliberation.
64. Presentment for payment.
65. Hours for presentment.
66. Presentment for payment of instrument payable after date or sight.
67. Presentment for payment of promissory note payable by instalments.
68. Presentment for payment of instrument payable at a specified place and not elsewhere.
69. Instrument payable at specified place.
70. Presentment where no exclusive place specified.
71. Presentment when maker, etc., has no known place of business or residence.
72. Presentment of cheque to charge drawer.
73. Presentment of cheque to charge any other person.
74. Presentment of instrument payable on demand.
75. Presentment by or to agent, representative of deceased, or assignee of insolvent.
75-A. Excuse for delay in presentment for acceptance or payment.
76. When presentment unnecessary.
77. Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST

SECTIONS.

78. To whom payment should be made.
79. Interest when rate specified.
80. Interest when no rate specified.
81. Delivery of instrument on payment, or indemnity in case of loss.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. Discharge from liability—

(*a*) by cancellation ;
(*b*) by release ;
(*c*) by payment.

83. Discharge by allowing drawee more than forty-eight hours to accept.
84. When cheque not duly presented and drawer damaged thereby.
85. Cheque payable to order.
85-A. Drafts drawn by one branch of a bank on another payable to order.
86. Parties not consenting discharged by qualified or limited acceptance.
87. Effect of material alteration.
Alteration by indorsee.
88. Acceptor or indorser bound notwithstanding previous alteration.
89. Payment of instrument on which alteration is not apparent.
90. Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

SECTIONS.

91. Dishonour by non-acceptance.
92. Dishonour by non-payment.
93. By and to whom notice should be given.
94. Mode in which notice may be given.
95. Party receiving must transmit notice of dishonour.
96. Agent for presentment.
97. When party to whom notice given is dead.
98. When notice of dishonour is unnecessary.

CHAPTER IX.

OF NOTING AND PROTEST.

99. Noting.
100. Protest.
Protest for better security.
101. Contents of protest.
102. Notice of protest.
103. Protest for non-payment after dishonour by non-acceptance.
104. Protest of foreign bills.
104-A. When noting equivalent to protest.

CHAPTER X

OF REASONABLE TIME

105. Reasonable time.
106. Reasonable time of giving notice of dishonour.
107. Reasonable time for transmitting such notice.

CHAPTER XI

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

SECTIONS.

108. Acceptance for honour.
109. How acceptance for honour must be made.
110. Acceptance not specifying for whose honour it is made.
111. Liability of acceptor for honour.
112. When acceptor for honour may be charged.
113. Payment for honour.
114. Right of payer for honour.
115. Drawee in case of need.
116. Acceptance and payment without protest.

CHAPTER XII.

OF COMPENSATION.

117. Rules as to compensation.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

118. Presumptions as to negotiable instruments—
(*a*) of consideration ;
(*b*) as to date ;
(*c*) as to time of acceptance ;
(*d*) as to time of transfer ;
(*e*) as to order of indorsements ;
(*f*) as to stamp ;
(*g*) that holder is a holder in due course.
119. Presumption on proof of protest.
120. Estoppel against denying original validity of instrument.
121. Estoppel against denying capacity of payee to indorse.
122. Estoppel against denying signature or capacity of prior party.

CHAPTER XIV.

OF CROSSED CHEQUES.

SECTIONS.

123. Cheque crossed generally.
124. Cheque crossed specially.
125. Crossing after issue.
126. Payment of cheque crossed generally.
Payment of cheque crossed specially.
127. Payment of cheque crossed specially more than once.
128. Payment in due course of crossed cheque.
129. Payment of crossed cheque out of due course.
130. Cheque bearing "not negotiable."
131. Non-liability of banker receiving payment of cheque.

CHAPTER XV.

OF BILLS IN SETS.

132. Set of bills.
133. Holder of first acquired part entitled to all.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. Law governing liability of maker, acceptor or indorser of foreign instrument.
135. Law of place of payment governs dishonour.
136. Instrument made, etc., out of British India, but in accordance with its law.
137. Presumption as to foreign law.

CHAPTER XVII.

NOTARIES PUBLIC.

138. Power to appoint notaries public.
139. Power to make rules for notaries public.

SCHEDULE.

(*Repealed.*)

THE
NEGOTIABLE INSTRUMENTS ACT, 1881.

ACT XXVI OF 1881

(AS AMENDED UP-TO-DATE.)

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Preamble.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange, and cheques; it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the NEGOTIABLE INSTRUMENTS ACT, 1881.

Local extent: Saving of usages relating to hundis, etc.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1882, Section 25,* or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

Commencement.

* See The Indian Paper Currency Act 1923 (X of 1923) Sec. 25.

Sec. 1.

NOTES.

Preamble.

Preamble is the introduction to the Act, "a key to open the meaning of the makers of the Act and the mischiefs it was intended to remedy," and its purpose is to indicate what in general terms was the object of the legislature in passing the Act.

"The preamble of a statute has been said to be a good means to find out its meaning, and is, as it were, a key to the understanding of it; and as it usually states or professes to state the general object and intention of the legislature in passing the enactment, it may legitimately be consulted for the purpose of solving any ambiguity or fixing the meaning of words which may have more than one, or of keeping the effect of the Act, within its real scope, whenever the enacting part is in any of these respects open to doubt." (*a*) Thus, the preamble may be resorted to for assistance in the exposition of doubtful words or ambiguous portions of the statute, (*b*) but though it may explain, it cannot control the enacting part, which may restrict (*c*) or go beyond the preamble. (*d*)

Scope of the Act.

The object and the purpose of this Act is to legalize the system under which claims upon certain mercantile instruments can be treated like ordinary goods passing from hand to hand. (*e*) The Indian Courts applied even very early the law merchant of England relating to negotiable instruments in cases where the bill was in English form, though the parties were Hindus. (*f*) However, they seemed to have hesitated to extend the principle of the law merchant to mofussil transactions of the nature of banking. (*g*)

Interpretation.

When the legislature wanted to codify the Indian Law, naturally, the English Law on the subject was referred to, and the English Law has been faithfully reproduced in the provisions of this Act, though we find here and there certain departures, probably

---

(*a*) Maxwell on "Interpretation of Statutes", 7th Edition, p. 37. *Sital Chandra* v. *Allen J. Delanney*, 20 C.W.N. 1158, 1163.

(*b*) *Turquand* v. *Board of Trade*, 11 App. Cases 286; Beal on "Cardinal Rules of Legal Interpretation" (3rd Edition) p. 292

(*c*) *Manilall Singh* v. *Trustees for Improvement of Calcutta*, 45 Cal. 343, 365; *Kashab Panda* v. *Bhobani Panda*, 18 C.L.J. 187.

(*d*) *Copeland* v. *Davies*, (1872) L.R. 5 H. L. 358; *Attorney-General* v. *Brodie*, 4. M.I.A. 190 at 200; *Chinna Aiyan* v. *Mahomed*, 2. M.H C. R. 322, 324; *Oolagappa Chetty* v. *D. Arbuthnot*, 1. I.A. 268; *Omrao Begum* v. *Government of India*, 10 I.A. 39, 44; *Queen-Empress* v. *Indarjit*, 11 All. 262, 266; *Vithu* v. *Govinda*, 22 Bom. 321, 327 (F.B.); *Kesavalu* v. *The Corporation of Madras*, 50 M. L J. 301.

(*e*) *Akhoy Kumar Pal* v. *Haridas Bysack*, 18 C.W.N. 494; *Mohendro* v. *Jadhub*, 14 W.R. (O.S.A.) 5.

(*f*) *Subbanarayana* v. *Ramasamiyar*, 30 Mad. 88, 91.

(*g*) *Syud Ali* v. *Gopal Das*, 13 W.R. 420.

due to the exigencies of the country to which it has been sought to be applied. Hence when no special considerations arise, with reference to Indian circumstances, the courts here will be justified in construing the statute conformably to the provisions of the English Law.(*a*) Though it may not be permissible for the Courts to leave the firm ground of the Act and explore the uncertain regions of the law merchant, such resort would be perfectly legitimate in the construction of the provisions of the Act which are sometimes of doubtful import. (*b*) In construing the Act, it will not be proper to find out what the law merchant was before the Act was enacted. (*c*) It may also be noted that the Act is not exhaustive of all matters relating to negotiable instruments nor does it purport to deal with all kinds of negotiable instruments. It merely regulates the issue and negotiation of bills, notes and cheques and even as regards them, it does not deal with the transmission of rights in them by operation of law or by assignment *inter vivos*. (*d*) In the absence of any express provision to the contrary in this Act, the general rules contained in the Contract Act will be applicable to such instruments as the obligations of parties to negotiable instruments are contractual in their nature. (*e*) For instance, the Act does not declare what consideration is sufficient and valid for a bill or note and therefore any consideration which will support a simple contract is sufficient for a note, bill or cheque. (*f*)

Other Negotiable Instruments.

Though promissory notes, bills of exchange and cheques are the only instruments specifically dealt with by the Act as appears from the preamble, there may be other kinds of instruments to which the Courts in India will have to extend the privilege of negotiability. (*g*) The branch of the law from which such instruments derive their authority is the law merchant; and the law merchant is not a permanently fixed and stereotyped body of law, but the accumulated product of mercantile customs to which sanction has been from time to time given by decisions of Court. (*h*) It was once thought in England that by usage no new

---

(*a*) *Veerappa* v. *Vellayan*, 10 L. W. 39.

(*b*) *Raghunathji* v. *Bank of Bombay*, 34 Bom. 72; *Jambhekar* v. *Subkarn*, 20 Bom. 133; *Purmanand* v. *Ruttonji*, 24 Bom. 65; *Bank of England* v. *Vagliano*, (1891) A. C. 107, 144.

(*c*) *Brojo Lal* v. *Budh Nath*, 55 Cal. 551; *Norendra Nath* v. *Kamal*, 23 Cal. 563.

(*d*) *Mahamad* v. *Ranga Row*, 24 Mad. 654; *Subbanarayana* v. *Ramasami*, 28 Mad. 244; *P, R. & Co.* v. *Bhagwandas*, 34 Bom. 192; *Muthar Sahib* v. *Kadhir*, 28 Mad. 544; *Ramanadhan* v. *Katha Velan*, 41 Mad. 353.

(*e*) *Subbanarayana* v. *Ramasami*, 28 Mad. 244; on appeal 30 Mad. 88.

(*f*) *Samuel Pillai* v. *Ananthanatha Pillai*, 6 Mad. 351.

(*g*) *Cf.* Sec. 137 of the Transfer of Property Act.

(*h*) 2 Hals. Sec. 823. As to the rule of proof of such custom, see *Wittenbaker* v. *Galstaun*, 36 C.L.J. 256, 260.

Sec. 1.

kind of negotiable instrument can be added to those already existing ;(*a*) but in later cases this position has been doubted, and it is now fairly well settled, (*b*) that any instrument containing a contract to pay money (*c*) or any other negotiable security representing money which is in a form which renders it capable of being sued on by the holder of it *pro tempore* in his own name, and which is transferable, by custom of trade, by delivery like cash, (*d*) is a negotiable instrument. Thus in England, exchequer and treasury bills, (*e*) bank-notes, (*f*) bonds, (*g*) scrips of a foreign government, (*h*) when they are negotiable according to the law of the country of issue, (*i*) dividend warrants, (*j*) and share warrants, (*k*) have been held to be negotiable instruments. But share certificates passing from hand to hand with blank transfer deeds do not thereby become negotiable instruments (*l*) if the shares themselves do not satisfy the requirements of negotiability as to their form, etc. So also deposit receipts (*m*), mates receipts (*n*) have been held to be not negotiable. But the debentures of the Bombay Improvement Trust payable to order, were held to be promissory notes, and therefore negotiable instruments. (*o*)

Delivery orders.

In *Anglo-Indian Jute Mills Co.* v. *Omade Mull*, (*p*) the question arose as to the title of a person holding *pakka* delivery orders of jute by indorsement. The Court found that by the usage of the jute trade in Calcutta, such *pakka* delivery orders are issued only on cash payment or pass from hand to hand by indorsement and are

---

(*a*) *Crouch* v. *Credit Foncier Co.*, (1873) L. R. 8 Q. B. 374.

(*b*) *Goodwin* v. *Robarts*, (1875) L.R. 10 Ex. 337 ; *Georgier* v. *Mieville*, (1824) 3 B. & C. 45. (Prussian Bonds).

(*c*) See *Dixon* v. *Bovill*, (1856) 3 Macg. H.L. 1.

(*d*) Cf. *Crouch* v. *Credit Foncier Co.*, (1873) L R 8 Q. B 374, 381 ; *Miller* v. *Race*, (1758) 1 Smith L.C. (13th Edition) 534 ; *Hazarimull* v. *Satish Chandra* 46 Cal. 331, 337.

(*e*) *Brandao* v. *Barnett*, (1846) 12 Cl. and F. 787, 805.

(*f*) *Raphael* v. *Bank of England*, (1855) 17 C.B. 161.

(*g*) *Colonial Bank* v. *Cady*, (1890) 15 A.C. 267, 285 ; *Gorgier* v. *Mieville* (1824) 3 B and C. 45.

(*h*) *Goodwin* v. *Robarts*, (1875) L.R. 10 Ex. 337.

(*i*) *Picker* v. *London and County Banking Co.*, 18 Q. B. D 515.

(*j*) B. of Ex. Act, Sec. 97, Cl. 3 (d) ; *Partridge* v. *Bank of England*, 9 Q.B.D. 396 ; *Slingsby* v. *Westminster Bank*, (1931) 1 K.B. 173.

(*k*) *Webb, Hale & Co.*, v. *Alexandria Water Co.*, (1905) 93 L. T. 339.

(*l*) *Hazarimul* v. *Satish Chunder*, 46 Cal. 331. Ind. Companies Act Secs. 28 and 29.

(*m*) *R. D. Sethna* v. *Grace*, 38 Bom. 618 ; *Manœl* v. *The Hongkong and Shanghai Banking Corporation*, 14 Bom. 498.

(*n*) *Natcheappa Chetty* v. *Irrawaddy Flotilla Co.*, 41 Cal. 670 ; as to what are mate's receipts, see *Cobban* v. *Downe* (1803) 5 Esp. 41 ; *Biddulph* v. *Bingham*, (1874) 30 L.T. 30.

(*o*) *Mercantile Bank of India* v. *Mascarenhas*, 52 Bom. 792, (affirmed on appeal 56 Bom. 1).

(*p*) 38 Cal. 127 ; *Amerchand & Co.* v. *Ramdas Vithaldas*, 38 Bom. 255, (affirmed in 40 Bom. 630 (P.C.), as to assignment of Railway receipts as instruments of title) ; *Dolat Ram* v. *B.B. and C.I. Railway Company*, 38 Bom. 659 ; *Bombay Steam Navigation Company* v. *Ramdoss*, 14 Bom. L.R. 532, 541 ; *G.I.P.Ry. V. Hanmandas*, 14 Bom. 57.

sold and dealt with in the market as absolutely representing the goods to which they relate. The point, however, is not further dealt with, as in that case, it was found that the vendor of the goods was estopped from disputing the claim of the indorsee of the orders. With the growth of trade and general expansion of commerce, new kinds of securities will claim recognition by Courts as negotiable instruments. When such a question does arise for consideration, our Courts will not hesitate to apply the principles deducible from similar cases in England, and will not be slow to recognize any new usage which may spring up under new and altered circumstances. (*a*) The fact that the usage can be shown to be of recent origin will not prevent the Court from giving effect to it. (*b*) For, as is well put by Cockburn, C. J. in *Goodwin* v. *Robarts*. (*c*)

Mercantile usage.

" Usage adopted by the Courts having been thus the origin of the whole of the so-called law merchant as to negotiable securities, what is there to prevent our acting upon the principles acted upon by our predecessors, and followed in the precedents they have left to us? Why is it to be said that a new usage which has sprung up under altered circumstances is to be less admissible than the usages of past times? Why is the door to be now shut to the admission and adoption of usage in a matter altogether of cognate character, as though the law had been finally stereotyped and settled by some positive peremptory enactment? It is true that this scrip purports on the face of it to be a security, not for money but for the delivery of a bond; nevertheless, we think that substantially and in effect it is a security for money, which, till the bond shall be delivered, stands in the place of that document, which, when delivered, will be beyond doubt the representative of the sum it is intended to secure. The usage of the money-market has solved the question whether the scrip should be considered security for, and the representative of, the money by treating it as such." It is not however competent, as already pointed out, for the Court to travel outside the Act on matters specifically dealt with therein and "explore the uncertain regions which are imperfectly defined by the phrase, Law Merchant." Nor is it the province of the Court to depart from the Act and make new law merely because it would be for the convenience of merchants to have it so; for, no degree of

(*a*) See *Natcheappa Chetty* v. *Irrawaddy Flotilla Co.*, 41 Cal. 670 (P.C.). See *Mercantile Bank of India* v. *D'Silva*, 52 Bom. 810 affirmed on appeal, 56 Bom. 1.

(*b*) *Bechuanaland Exploration Co.* v. *London Trading Bank*, (1898) 2 Q.B. 658; *Edelstein* v. *Schuler & Co*, (1902) 2 K. B. 144; *Juggomohun* v. *Manickchand*, 7 M.I.A. 263, 282; *Sati Prasad* v. *Manmatha*, 6 I.C. 291; *Jethmal* v. *B. B. & C. I. Ry. Co.*, 3 Bom. L. R. 260 (266).

(*c*) (1875) L.R. 10 Ex. 337.

Sec. 1.

commercial convenience can convert bad law into good. (*a*) The observations of Batchelor, J. in *Raghunathji* v. *Bank of Bombay* (*b*) are in our opinion a little too strong and unnecessarily cautious. For the exigencies of trade are continually expanding and the Courts of the country are not to be slow in according recognition to the expedients devised by traders for satisfying them. (*c*) In these days usage is established much more quickly than it was in days gone by; more depends on the number of transactions which help to create it than on the time over which the transactions are spread; and it is probably no exaggeration to say that nowadays there are more business transactions in an hour than there were in a week a century ago. (*d*)

Local Extent.—The Act extends to the whole of British India which is defined in the General Clauses Act (X of 1897). Sec. 3, Cl. 7, thus:—

"British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India. (*e*) The Act has been declared to be applicable to Upper Burmah except Shan States, to parts of Hyderabad under the Resident, Berar, (*f*) and to the Civil and Military Station of Bangalore. (*g*)

Paper Currency Act.

The Negotiable Instruments Act does not affect the provisions of Section 25 of the Indian Paper Currency Act (XX of 1882) which was repealed by the Indian Paper Currency Act (III of 1905); this and the amending Act II ol 1909 have been repealed by the Indian Paper Currency Act (II of 1910) which itself was repealed by Act X of 1923. Sections 26 and 27 of the Act of 1923 correspond to Sections 25 and 26 of the Act of 1882. By those sections, no person in British India can (1) draw, accept, or issue in British India any bill of exchange, hundi, promissory note, or other engagements for payment of money payable to bearer on demand, (2) or borrow, owe, or take up any sum or sums of money on the bills, hundis, or notes payable to bearer on demand. (*h*)

The above sections of the Paper Currency Act are applicable to bills and notes in oriental languages, for, the exception to Section 1 of the Negotiable Instruments Act provides only against the provisions

---

(*a*) *Raghunathji Tarachand* v. *Bank of Bombay*, 34 Bom. 72, 83; *Dossa Bhai* v. *Virchand*, 21 Bom. L.R. 1.

(*b*) 34 Bom. 72.

(*c*) 2 Hals. 966; *Juggomohun* v. *Manickchand*, 7 M.I.A. 263, 282; *Cowie* v. *Remfry*, 3 M.I.A. 448, 465.

(*d*) *Edelstein* v. *Schuler & Co.*, (1902) 2 K. B. 144, 152.

(*e*) Gazette of India, 1909, I, 931.

(*f*) *Ibid.*, 1904, I, 809.

(*g*) *Ibid.*, 1910, I, 1197.

(*h*) See Appendix. H.

Sec. 1.

of that Act overruling local usages regarding them. (*a*) So it has been held in the case of such a hundi payable to bearer on demand, even the indorser is not estopped from setting up the invalidity against his indorsee. (*b*) Not only bills and notes made payable expressly to bearer on demand fall within the mischief of these provisions but also such, as though made in other words, are in law bills and notes payable to bearer on demand. (*c*) Such cases are provided for in clear terms by the English Statute 17 and 18 Vict. C. 83 Sec. 11, which, with the Statute 7 and 8 Vict. C. 32, forms the corresponding provisions on the subject in England. Where, however, the words in the note are that the money will be paid "on demand to him, that is, to the lender or whomsoever he orders it to be paid," it was held that the money was not payable to bearer on demand and that the note was good, though in an accompanying receipt the note was described as "Indul Talab" meaning 'on demand.' (*d*). The prohibition contained in the section does not however extend to indorsement in blank; for a person by indorsing in blank does not 'make' a note payable to bearer on demand. (*e*) Where a hundi is drawn in favour of a specified person but is made payable to bearer, it is void under the section (*f*) though a bill payable to bearer who brings it to the place of payment on the order of the payee does not come within the section as there must be an indorsement by the payee. (*g*)

Proviso.

The proviso to the section exempts from its operation cheques or drafts payable to bearer on demand or otherwise, on bankers, shroffs, etc., by bankers in respect of deposits held by them at the disposal of such customers. (*h*) In dealing with such instruments, an opportunity should be given to the payee to show that a bill or hundi was drawn against funds in the hands of the drawee. (*i*)

The Act, as is apparent, is intended to protect the monopoly

(*a*) *Veerappa* v. *Muthuraman*, 12 L.W. 12.

(*b*) *Alagappa* v. *Alagappa*, 44 Mad. 187; *Low & Co.*, v. *Sudhanna Kumar*, 35 C.W.N. 587. See *Arunachalam* v. *Narayana*, 42 Mad. 470.

(*c*) *Jetha* v. *Ramachandra*, 16 Bom. 689, 696; *Chidambaram* v. *Aiyaswami*, 40 Mad. 585; *Mg Po Tha* v. *L.T. Attaides*, (1916) L.B.R. 191; *Low & Co.*, v. *Sudhanna Kumar*, 35 C.W.N. 587; *Mian Bakhsh* v. *Bodhiya*, 50 All. 839; *Nachimuthu* v. *Andiappa*, (1917) M.W.N. 778; *Hidayat Ali Beg* v. *Nga Kyaing*, 24 I. C. 721. See *Dhanji* v. *Taylor*, 7 I. C. 604 where the statement is considered to be too wide.

(*d*) *Ajudhia Prasad* v. *Riknath*, 50 All. 764.

(*e*) *Sana Eman Sahib* v. *Mooma Ena Mahomed*, 22 I.C. 77; *Shaik Ismail* v. *Ezellial*, 56 I.C. 930.

(*f*) *Arunachalam Chettiar* v. *Narayanan Chettiar*, 42 Mad. 470; *Mian Bakhsh* v. *Bodhiya*, 50 All. 839.

(*g*) *Gopaliar* v. *Maiappa Chetty*, (1918) M.W.N. 177.

(*h*) *Arunachalam* v. *Narayanan*, 42 Mad. 470. Hundi drawn against an intended deposit but a person does not become a banker merely because he endorsed to another, a hundi drawn on him, *Alagappa* v. *Alagappa*, 44 Mad. 187.

(*i*) (1918) M.W.N. (Sh. n.) 7.

Sec. 1.

which is secured to the Government of India to issue the paper currency of the country. (*a*) The Act is a penal one, and penal Acts are to be construed strictly. (*b*) An instrument providing for the payment of a sum of money whenever *dhani*, *i.e.*, owner or lender may demand, is not an instrument payable to bearer on demand, and a suit can be maintained on it. (*c*) In the above case, Farran, J. expressed the opinion that though bills and notes payable to bearer on demand are illegal, the legislature did not intend to punish innocent holders of bills issued in breach of the law, and that suits might be maintained on such notes and bills. This view was given effect to in a case in Sindh (*d*) where it was held that neither the object nor the consideration could be said to be unlawful and that therefore a suit on a note payable to bearer on demand was maintainable. But it is submitted that this opinion is not sound and has been dissented from by Courts in Burma (*e*) and Madras. (*f*) In support of the latter decisions reference may usefully be made to cases decided under analogous Acts, such as, the Excise, (*g*) Opium (*h*) and Salt Acts. (*i*) Even under the English Statutes which protect the monopoly of the Bank of England by provisions similar to those of the Paper Currency Act, transactions which though not strictly forbidden, are still opposed to their general policy and intent have been held to be illegal. (*j*) The contrary view may well be sustained on the analogy of the cases which have decided that the stamp law although providing penalties and prohibitions was not intended to put an end to the rights of parties, (*k*) and it may be argued that the Act neither declares the bill payable to bearer on demand illegal nor makes it absolutely void. In any case, it is, at least, necessary to remember the distinction between

'Dhani'

(*a*) *Jetha Parkha* v. *Ramachandra*, 16 Bom. 689, 700.

(*b*) *Ibid. Empress* v. *Kola Lalang*, 8 Cal. 214; *Reg* v. *Bhista Bin Madanna*, 1 Bom. 308.

(*c*) *Jetha Parkha* v. *Ramachandra*, 16 Bom. 689.

(*d*) *Dhanji* v. *Taylor*, 7 I. C. 604.

(*e*) *Maung Po Tha* v. *L. D'Attaides*, 8 I. C. 962; *Hidayat Ali Beg* v. *Nga Kyaing*, 24 I. C. 721.

(*f*) *Chidambaram* v. *Aiyasami*, 40 Mad. 585. See (1918) M.W N. (Sh. n.) 7 and *Attorney-General* v. *Birkbeck Bank*, 12 Q.B.D. 605.

(*g*) *Behari Lall Saha* v. *Jagodischander Saha*, 31 Cal. 798; *Medisetti Pentayya* v. *Venkatareddy*, (1912) 1 M.W.N. 444.

(*h*) *Nalain Padmanabham* v. *Sait Badri Nath*, 35 Mad. 582.

(*i*) *Ismalji Yusufalli* v. *Ragunath*, 33 Bom. 636; see also *Bensley* v. *Bignold*, 5 Bar. & Ald. 335.

(*j*) *Booth* v. *Bank of England*, 7 Cl. and F. 509.

(*k*) *Khoob Lal* v. *Jungle Singh*, 3 Cal. 787: See also (Beng.) Reg. 38 of 1793 and (Mad.) Reg. 19 of 1802 where loans are declared not recoverable in any Court of judicature. *Cf.* 37 George III. C. 142 where lending by British subjects to the Native Princes of India is declared unlawful and the securities are declared void even in the hands of a holder in due course; 5 George IV. C. 113. Sec. 39 as to the saving in favour *bona fide holders*; but see *Gadd* v. *Provincial Union Bank*, (1909) 2 K.B. 353; *Whiteman* v. *Sadler*, (1910) A.C. 514. In re A *Debtor*, Ex parte *Garden*, (1908) 52 Sol. Jour. 209 (as to the effect of a transaction subjecting one to a penalty).

illegality which avoids a negotiable security in the hands of any holder and illegality which merely shifts on to the holder of the instrument the *onus* of proving he is a holder in due course. This distinction has not been noticed in the decision of the Madras High Court (*a*) which states that the payee of a note, which is illegal on the face of it, is not a holder in due course. It is also said that a negotiable security cannot be absolutely void except by statute and the only surviving example of such a statute in England is stated to be Sec. 5 of the Betting and Loans (Infants) Act, 1892. (*b*) Where the document in suit consisted of a pronote and a receipt and in the latter the pronote was described as 'indultalab' meaning 'on demand,' and in the note the words were that the money would be paid on demand to him, that is to the lender, or to whomsoever he orders it to be paid, it was held that the note was legal and valid and could not be said to offend the provisions of Sec. 25 of the Paper Currency Act (*c*). But a promissory note payable on demand to the lender or the bearer or to order offends the provisions of the Paper Currency Act, and therefore cannot form the basis of the suit. (*d*) Where, however, the pronote stated that interest is to be paid at 9 per cent per annum with half-yearly rests, it may be concluded that the note contemplated that the loan should be for a period of more than one half year, and hence the note cannot be said to be payable on demand (*e*). Again, where a note is payable to the bearer who brings it to the place of payment on the order of the payee does not offend against the Paper Currency Act, as it is clear that there must be an in indorsement by the payee (*f*).

Though a promissory note payable to bearer on demand is illegal, there is nothing to prohibit such a note being admissible in evidence as evidence of the debt. Such a note can therefore be used in evidence not only as acknowledgment (*g*) but also to support a hypothecation bond whose consideration is made up of a prior liability evidenced by such a note. (*h*) The plaintiff may succeed even on the original consideration if the suit is within time. (*i*)

Local usages.

The Act expressly saves from its operation any local usage relating

(*a*) *Chidambaram* v. *Aiyasami*, 40 Mad. 585.

(*b*) *Byles* (19th Edition), 138 & 139

(*c*) *Ajudhia Prasad* v. *Riknath*, 50 All. 764.

(*d*) *Mian Bakhsh* v. *Bodhiya*, 50 All. 839.

(*e*) *Behari Lal* v. *Allahabad Bank* (1929) All. 664.

(*f*) *Gopaliar* v. *Maiyappa*, 8 L. W. 501.

(*g*) *Nachimuthu* v. *Andiappa*, (1917) M. W. N. 778; *Kesavaramayya* v. *Visamsetti*, 50 M. L. J. 36; *Nazir Khem* v. *Ram Mohan*, (1931) All. 183 (F. B.).

(*h*) *Natarajulu* v. *Subramania*, 45 Mad. 778.

(*i*) *Chidambaram* v. *Aiyasami*, 40 Mad. 585; *Hidyat Ali* v. *Nga Kyaing*, 24 I. C. 721; *Nachimuthu* v. *Andiappa*, (1917) M. W. N. 778; *Shanmuganatha* v. *Srinivasa*, 40 Mad. 727; *Mian Bakhsh* v. *Bodhiya*, 50 All. 839; *Natarajulu* v. *Subramanyam*, 45 Mad. 778.

Sec. 1.

to a negotiable instrument in an oriental language. (*a*) The exemption however applies only to the provisions of this Act and not to those of any other, such as, the Paper Currency Act. (*b*) At the time of passing the Act, there was a strong body of opinion on the one hand that both the Native and the European law should be assimilated at once, while, on the other hand, there were some persons who advocated the total exclusion of the hundis from any part of this measure. But the legislature adopted a *via media* in saving local usages from the operation of the Act, and at the same time providing that such local usages may be excluded by any special provisions in the instrument. The following extract from the Select Committee's report clearly explains the policy of the legislature in adopting such a course :

" We have carefully considered the arguments urged on the one side by the learned Chief Justice of Bengal and the Bank of Bengal for the immediate application of the measure in its entirety to hundis and on the other side by the Government of the Punjab for the total exclusion of hundis from any part of the measure. We have come to the conclusion that the Bill should in this respect be left substantially as it stands. Admitting with the Chief Justice that the one main principle of Indian codification is to reconcile and assimilate, as far as possible, the Native and European law on each subject, we would point out that this principle must be applied so as to produce as little friction as possible, and we feel assured that any sudden abolition of the numerous local usages (there is no general custom) as to hundis, uncertain and undefined as they often are, would cause much and justifiable dissatisfaction among Native bankers and merchants in certain parts of the country. But we believe that the effect of the Bill, if passed with the saving of the local usages in question, will be not as the Chief Justice fears, to stereotype and perpetuate these usages, but to induce the Native mercantile community gradually to discard them for the corresponding rules contained in the Bill. The desirable uniformity of mercantile usage will thus be brought about without any risk of causing hardship to native bankers and merchants. How long this change will take is of course impossible to prophesy. But the Bank of Bengal has supplied evidence that the Native usages as to negotiable paper have of recent years been greatly changing and that the tendency is to assimilate them more and more to the European custom." (*c*)

(*a*) *Mungumal Jessa* v. *A. L. V. R. C. T. Firm*, 4 M.L.T. 309 (where the local usage among Nattukottai Chetties of the agents signing with the initials of the Firm to denote agency was recognised); *Ghulamsa Rowther* v. *Visvanathan*, (1917) M. W. N. 344; *Champaklal* v. *Keshori Chand*, 50 Bom. 765.

(*b*) *Veerappa* v. *Muthuraman*, 12 L. W. 12.

(*c*) Gazette of India, 1879, V. 75.

Sec. 1.

Local usages exempted by the section need not necessarily be those existing at the time when the Act came into force; they may come into existence later on. Under the ordinary law, any usage to be recognised by a Court of Justice must be ancient, uniform and certain; but in the case of negotiable instruments, however, that the custom should be ancient will not be insisted upon by the courts with the same strictness as in other cases, for "the very fact that the ways of commerce have so widened and the number of transactions in every department of the trade so greatly multiplied has led inevitably to new customs and usages being more speedily devised, more speedily adopted and more speedily recognised, than in times past." (*a*) For a trade custom to be recognised it must be proved to be certain, invariable, reasonable and so notorious that everybody in the trade enters into a contract with that usage as an implied term. (*b*)

Hundis

Bills of Exchange in vernacular languages are generally called 'hundis.' They have been in circulation in this country long before the Act came to be passed, and usages attaching to them varied with the locality in which they came into existence, or were circulated. Under Hindu law a hundi payable to order was negotiable without an indorsement by the payee. (*c*) This was doubted, but it has been held that a hundi accepted by a drawee was assignable without any regular form of indorsement. (*d*) Again, the indorser of a hundi to whom the hundi is returned dishonoured without any indorsement in his favour, might sue upon it, (*e*) and in an earlier case, the indorsee of a forged hundi was compelled to cancel the indorsement. (*f*) Under the law merchant and even under Hindu law, forgery does not confer any title in favour of a person who claims through such forged indorsement. (*g*) The present rule of requiring the holder to present the instrument within a reasonable time was applied to hundis as a part of the commercial law of the place. (*h*) Where on account of a loan of Rs. 800 the borrower indorsed to the lender two hundis for Rs. 1,500 and took away Rs. 698 and odd as discount for Rs. 700, and the lender, being unable to discover the drawer of hundis, sued the borrower not on the

---

(*a*) See *Edelstein* v. *Schuler & Co.* (1902) 2 K. B. 144, 154 per Bigham, J.; *Juggomohun* v. *Manickchund* 7 M. I. A. 263, 282; *Chandanmull* v. *National Bank*, 51 Cal 43, 54; *Cf. Cowie* v. *Remfry*, 3 M. I. A. 448, 465.

(*b*) *Price* v. *Browne*, 14 Mad. 420, 423; *Volkart Bros.* v. *Vettivelu*, 11 Mad. 459; *Mackenzie Lyall & Co.* v. *Chamroo Singh & Co.*, 16 Cal. 702; *Nelson* v. *Dahl*, 12 Ch. D. 568; *Dahl* v. *Nelson Donkin & Co.*, 6 A. C. 38; 1 Sm. L. C. (13th Edition) 630, 631.

(*c*) *Rajroopram* v. *Buddeo*, (1883) 1 Hyde, 155: 1 Ind. Jur. 93.

(*d*) *East India Bank* v. *Khoja Vullie* 1 Ind. Jur. (N. S.) 247.

(*e*) *Byjnath Sahoo* v. *Racharam*, 5 W. R. 86.

(*f*) *Gyanee Ram* v. *Palee Ram*, 2 N. W. P. 73.

(*g*) *Thakur Dass* v. *Futtehmull*, 7 B. L. R. 275.

(*h*) *Gopal Das* v. *Seetaram*, 3 Agra. 268.

Sec. 1.

hundis, but on the two alleged loans of Rs. 800 and Rs. 698 and odd respectively, it was held in that case, that the only right of action left to the lender was on the hundis themselves, the original loan having been extinguished by the discount of the hundis. (*a*) A custom to the effect that the acceptor of a hundi should call for a triplicate from the drawer when a duplicate is presented for payment was pleaded in *Indur Chander Dugar* v. *Luchmee Bibi*, (*b*) but the court decided the case on another point. A custom at Murshidabad to allow interest on hundis drawn payable so many days after sight was held good and given effect to. (*c*) Ordinarily, when an agent signs a negotiable instrument without showing on the face of it that he signs as such agent, he will be personally bound; (*d*) but when it was proved that the local usage in Dacca was for gumastas to draw bills on their principals without thereby incurring liability for the defections of their principals, the court gave effect to such custom, and relieved the gumasta of all liability. (*e*) In 1875 an interesting question as to the usage among the shroffs in Bombay came before the court. The course of business as proved in that case was that a shroff to whom a hundi was sent for collection by his customer gave him credit for the amount and then he acquired all the rights of a holder in due course. This usage was recognised by the High Court on the Original Side, and was confirmed on appeal. (*f*) In the same case evidence was let in to prove that when a hundi was lost or stolen, the rightful holder might, according to usage, obtain from the drawer a *peth* or duplicate and on presentation of this to the drawee, had a right to payment, the original not having been already presented and paid, which in the case of a *hundi* payable to *shah* may occur. (*g*) In a later case, it was found that the local usage at Bushire was to present the hundi for payment at the Bank and for the acceptor to call at the Bank on the due date and effect a settlement, and the court agreeably to that custom held that a presentment in accordance with the usage was a valid presentment, though it did not comply with the strict requirements of Sections 70 and 71 of the Negotiable Instruments Act. (*h*) A hundi when paid and cancelled is called "khokha." (*i*)

(*a*) *Ramlal Sircar* v. *Gopal Doss*, 7 W. R. 154.

(*b*) 7. B. L. R. 682.

(*c*) *Dhunput Singh* v. *Maharajah Jugut Indur*, 4 W. R. 85.

(*d*) *Pigou* v. *Ram Kishen*, 2 W. R. 301.

(*e*) *Haree Mohun* v. *Krishno Mohun*, 17 W. R. 442.

(*f*) *Sugan Chand* v. *Mulchand*, 1. Bom 23.

(*g*) *Ibid*, 1 Bom. at 27; *Indur Chunder* v. *Luchmee Bibi*, 7 B. L. R. 682.

(*h*) *Imperial Bank of Persia* v. *Fatte Chand*, 21 Bom. 294.

(*i*) *Mathews* v. *Girdharlal*, 7 B. H. C R. (O. C. J.) 2.

In case of dishonour of a hundi, it was not settled even before the Act whether notice was necessary and when it should be given. It has been held in a number of cases that though prompt notice is not necessary, notice within a reasonable time should be given. There have been other cases which hold that no notice at all is necessary. The point is fully dealt with under Section 93.

Even an oral acceptance of a hundi may be recognised by Court if justified by local custom. (*a*) In the Punjab, a drawer of a bill of exchange or hundi by crossing the bill with the words *sri-nishani* is deemed to relieve himself from any personal liability in case of the bill being subsequently dishonoured. (*b*)

1. Shah Joghi.

There are a few well-known kinds of hundis which require special mention. The first of them is Shah Joghi hundi, *i.e.*, a hundi payable only to a respectable holder, that is, a man of worth and substance known in the bazar. (*c*) The Shah Joghi hundi is not a hundi payable to bearer but only to a "respectable bearer" and that only when it is indorsed by the last indorsee. (*d*) The nature of a Shah Joghi hundi was elaborately considered by the Bombay High Court and it was held that at its inception it is a hundi that passes from hand to hand by delivery and requires no indorsement. The body of the hundi requires that the hundi should be paid to a Shah. A Shah Joghi hundi is similar to some extent to a cheque crossed generally which is payable only to or through some banker, the object being that payment should be made only to a respectable holder. (*e*) The hundi may pass from hand to hand till it reaches a Shah who, after making due enquiries to secure himself presents it to the drawee for acceptance of payment when its negotiability ceases. (*f*) It will not be paid unless the name of the Shah by whom it is presented is indorsed on it and unless inquiry is made to identify him and to find out if he is respectable. Shah Joghi hundi differs from the ordinary bill of exchange in that, as a general rule, the acceptance of the drawee is not written across, so as thereby to give it an additional degree of mercantile credit and to that

---

(*a*) 7 Cal. S. D. Dec. 203. *Panna Lal* v. *Hargopal*, 51 I. C. 250 (usage of oral acceptance in Delhi).

(*b*) *Shadi Ram* v. *Prij Raj*, 13 P. R. 1821; Rattigan's Digest of Customary Law, 268.

(*c*) *Lalla Mal* v. *Kesho Das*, 26 All. 493; *Bansidhar* v. *Jwala Prasad*, 16 Bom. L. R. 434; McPherson on Contracts 168; *Kishore Chand* v. *Gurditta*, 10 I. C. 315; *Madhoram* v. *Nandu Mal*, 1 Lah. 429.

(*d*) *Murlidhar* v. *Hukumchand*, (1932) Lah. 312; *Madhuram* v. *Nandu Lal*, 1 Lah. 429.

(*e*) *Ibid.*

(*f*) *Champaklal* v. *Keshorichand*, 50 Bom. 765; *Goursimull* v. *Dhansukdas*, 7 B. L. R. 289 (Note); *Jalanchand* v. *Assaram*, 22 C. L. J. 22; *Kesharichand* v. *Asharam*, 22 C. L. J. 209; but see *Thakurdas* v. *Fattehmull*, 7 B. L. R. 275. *Madu Ram* v. *Nandu Lal*, 1 Lah. 429; *Murlidhar* v. *Hukum Chund*, (1932) Lah. 312.

Sec. 1.

extent make it just to impose an additional degree of liability on the acceptor; but as a rule the particulars are entered in the drawee's books. Again, this hundi is frequently not presented for acceptance before it is presented for payment, either before it is due or after. (*a*) The drawee before paying has to satisfy himself that the person demanding payment is a Shah, for the payment is made only on the responsibility of that person. (*b*) A drawee paying the amount without due inquiry would be liable to the true owner for damages, (*c*) especially, if the payment by him is not in due course, as where he pays after a countermand by a telegram. (*d*) If there is no negligence on the part of the drawee in paying it to a Shah who derives title through a forged indorsement, such a person, though innocent, is liable under the mercantile uage of Bombay to reimburse the drawee with interest at 6 p. c. on the amount paid, provided the drawee gave notice and claimed payment as soon as he discovered the forgery. (*e*) But the person can relieve himself of the liability by producing the forger. (*f*) This liability of the Shah to refund arises only when he is paid as a Shah and not as an indorsee for collection of a hundi purporting to have been drawn against the security of a Railway receipt. (*g*) An indorsement "for realisation" of a Shah Joghi hundi is in the nature of a restrictive indorsement, which gives the indorsee right to receive payment and sue the acceptor, if not paid. But he cannot transfer his rights as an indorsee to anybody else. (*h*) Any defence available to the acceptor against the indorser is available against any person to whom it is indorsed for realisation, or any subsequent party. (*i*)

2. Jokhmi hundi.

A second kind of hundi is the Jokhmi hundi. The question about it arose in *Jadowji Gopal* v. *Jetha Shamji*, (*j*) where a hundi was drawn against the goods shipped on the vessel named in the hundi by the drawer to the drawee, who thus got funds of the drawer to pay out of the hundi, and thus it is in the nature of a policy of insurance with this difference that the money was paid beforehand to be recovered if the suit was not lost. The term Jokhmi itself means "against risk" or "against goods" or "conditional." But the custom, however,

(*a*) *Davlatram* v. *Bulakidas*. 9 B. H. C. R. (O. C. J.) 24, 25.

(*b*) *Ganes Das* v. *Lachmi Narayan*, 18 Bom. 570, where the usual method of presentation for acceptance and payment is fully set out.

(*c*) *Ibid*; *Bhuput Ram* v. *Hari Prio Coach*, 5 C. W. N. 313.

(*d*) *Lalla Mal* v. *Kesho Das*, 26 All. 493.

(*e*) *Bansidhar* v. *Jwala Prasad*. 16 Bom. L. R. 434.

(*f*) *Davlatram* v. *Bulakidas*, 6 B. H. C. R. (O. C. J.) 24; *Bansidhar* v. *Jwala Prasad*, 16 Bom L. R. 434.

(*g*) *Sethna* v. *Jwala Prasad*, 39 Bom. 513.

(*h*) *Thakur Doss* v. *Futteh Mull*, 7 B. L. R. 275; *Bhuput Ram* v. *Hari Prio Coach*, 5 C. W N. 313; *Ganes Das* v. *Lachmi Narayan*, 18 Bom. 570.

(*i*) *Ibid*, 18 Bom. 570.

(*j*) 4 Bom. 333, 344; See for fuller description, 9 Bom. L. J. 303 *et. seq.*

imposed no liability on the drawee to take up the hundi, even though he should take possession of the goods consigned to him; and following that custom, it was held that the Jokhmi was taken solely on the credit of the drawer, and that the drawee was not liable to the holder. The drawer, however, escapes liability if the goods against which the hundi is drawn are totally lost.

3. Nam Jog hundi.

In contradistinction to Shah Joghi hundi there is what is known as the Nam Jog hundi, that is, a hundi payble to the party named in the bill or his order. The bill may or may not be accompanied by a descriptive role of the party in whose name it is granted. When there is a descriptive role, it cannot be indorsed or transferred ; but when there is no such description, it can be indorsed. (*a*)

4. Jawabee hundi.

The transaction known by the name of Jawabee hundi is as follows :—A person desirous of making a remittance writes to the payee and delivers the letter to a banker who either indorses it on to any of his correspondents near the payee's place of residence or negotiates its transfer. On its arrival, the letter is forwarded to the payee who attends and gives his receipt in the form of an answer to the letter, which is forwarded by the same channel to the drawer of the order. (*b*) This, it will be noticed, is more in the nature of a letter of recommendation than a bill of exchange. The banker may cancel the order for payment by advice to his correspondent at any time before payment, in case the so-called drawer fails in his promise to provide the banker with the amount of the order. (*c*)

5. Zickri chit.

According to the usage of shroffs in the case of Marwari hundis, a hundi may be accepted for honour under what is called *Zickri chit.* This is a letter of protection given to a holder by some prior party to the hundi to be used by him in case the hundi is not accepted. It is generally addressed to a person in the town where the bill is payable, asking him to take up the hundi in case of dishonour. Such usage will even now be recognised by the courts notwithstanding the fact that the provisions of Sections 108 and 109 of the Act are not complied with.

When there is no local usage proved, the provisions of the Act will be applied even to hundis and other instruments in oriental languages. (*d*) Besides, such usages, even if there be, may be excluded by appropriate words in the instrument itself indicating that the legal relation of the parties shall be governed by the provisions of this Act

---

(*a*) Mc Pherson on Contracts, (1868) Edition 168.
(*b*) *Ibid*, 166.
(*c*) *Ibid*, 166.
(*d*) *Krishna Shetbin* v. *Hari* 20 Bom. 488 ; *Moti Lal* v. *Moti Lal*, 6 All. 78 ; *Ram Ravji* v. *Pralhaddas*, 20 Bom. 133.

Sec. 3.

only. Even without an enabling provision such as the above, parties may contract out of the custom applicable to hundis, for no custom can over-ride the express terms of a contract. (*a*) A person relying on any local usage must allege and prove it ; and if he does so, the courts will apply such usages to instruments in oriental languages even after the Act has come into force. (*b*)

2. *Repealed by the Repealing and Amending Act 1891 (XII of 1891).*

Interpretation clause.

3. In this Act—

"banker" includes also persons or a corporation or company acting as bankers : and

"notary public" includes also any person appointed by the Local Government (*c*) to perform the functions of a notary public under this Act.

NOTES.

The section does not define the term 'banker.' A banker is one who, in the ordinary course of business, receives money which he repays by honouring the cheques of the persons from, and on whose account, he receives it. A person acting as banker is considered as such, though he does not keep open shop. (*d*) But he must be one who trades or traffics in money, receives and remits money, negotiates bills of exchange, etc., with a view to make a profit by such a business. (*e*) A stock broker and notary public who largely engaged in trade, received money from some of his customers and paid it out again, and occasionally discounted drafts, but who neither held himself out as a banker, nor appeared to have been so considered is not a banker. (*f*) Similarly, a large mercantile house trading in cotton and opium which did not receive money on deposit to any great extent and did not advance money on security cannot properly be called 'bankers,' though they might have done a small amount of banking business. (*g*) Nor is a Government treasury a bank even

(*a*) *Indur Chunder* v. *Luchmi Bibee*. 7 B. L. R. 682; *Cf.* Evidence Act, Sec. 92, Cl. (5).

(*b*) *Jambu* v. *Palaniappa*, 26 Mad. 526.

(*c*) The words 'Local Government' were substituted for 'Governor-General in Council' by Act IV of 1914.

(*d*) Ex parte *Wilson*, 1 Atk. 218.

(*e*) *Rangasami* v. *Sankaralingam*, 43 Mad. 816.

(*f*) *Stafford* v. *Henry*, 12 Ir. Eq. R. 400.

(*g*) *The New Fleming Spinning and Weaving Co.* v. *Kessowji*, 9 Bom. 373, 411 ; see also *Ratulal* v. *Vrijbhukhan*, 17 Bom. 684.

Sec. 3.

though local boards deposit money in it and issue orders for payment out, which are respected by the treasury, the element of making profit out of the business being absent in the case of the treasury.(*a*) A banker is the debtor of his customer bound to discharge his indebtedness by honouring the customer's cheques. This is the characteristic feature of the legal status of a banker in relation to his customer. (*b*) When a person gives money to a Native banker, it is always a question of fact to decide whether such giving of money amounted to merely a loan or a deposit. (*c*)

Notary public.

Notary public is a very ancient institution in England originally ecclesiastic in nature, and even now the appointment of these notaries in England is in the hands of the Archbishop of Canterbury. (*d*) In this country owing to the want of the notaries in the mofussil, the Act gives power to the Local Government to appoint persons to exercise the functions of notaries public. Ordinarily, their functions are "to attest deeds, contracts and other instruments that are to be used abroad and to give a certificate of the due execution of such documents, which certificate, if duly authenticated by his signature and official seal, is accepted in all countries where notarial *acts* are recognised as proof of the acts done in his presence and attested by him." (*e*) The force and effect of the notarial acts consist in the fact that they are in themselves *presumptio veritatis et solemnitatis*; they are presumed to be true and regular until the contrary is established, (*f*) and by the law of nations the notary has credit everywhere. (*g*) Persons appointed in accordance with the powers given under the Act can perform only the functions required under the Act and no more. Their seal will be taken judicial notice of under Section. 57, Cl. (6) of the Evidence Act. But it may be observed that noting and protesting under the Act do not necessarily require sealing, (*h*) though in the Rules relating to notaries, provision is made for their using a plain seal.

(*a*) *Rangasami* v. *Sankaralingam*, 43 Mad. 816.

(*b*) Hart's Law of Banking, p. 1. Cf. *Foley* v. *Hill*, (1848) 2 H. L. C. 28 (36); *Halifax Union* v. *Wheelwright*, (1878) L. R. 10 Ex. 183, 193; *Dharam Das* v. *Ganga Devi*, 29 All. 773, 776; *Bradley* v. *Agra Bank*, 101 P.R. 1885; *Official Assignee of Madras* v. *Rajam Iyer*, 33 Mad. 299.

(*c*) See *Perundevitayar* v. *Nammalvar*, 18 Mad. 390; *Dorabji* v. *Muncherji*, 19 Bom. 352, 359; *Ichha* v. *Natha*, 13 Bom. 338; *Dharam Das* v. *Ganga Devi*, 29 All. 773, 776; *A. G. of Bengal* v. *Kristo Kamini*, 31 Cal. 519.

(*d*) 25 Henry VIII, C. 21.

(*e*) Brooke's Notary (VIII Edn.) 17.

(*f*) *Cf.* Sec. 85 of Ind. Evidence Act. *Henderson*, In the goods of, 22 Cal. 491. Brooke's Notary (VIII Edn) 90 but see at p. 53.

(*g*) *Hutcheon* v. *Mannington*, (1802) 6 Ves. 823.

(*h*) Secs. 99 and 101 *post*.

CHAPTER II

OF NOTES, BILLS AND CHEQUES

"Promissory note."

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

ILLUSTRATIONS

A signs instruments in the following terms :—

(*a*) "I promise to pay B or order Rs. 500."

(*b*) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."

(*c*) "Mr. B, I O U Rs. 1,000."

(*d*) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(*e*) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(*f*) "I promise to pay B Rs. 500 seven days after my marriage with C."

(*g*) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(*h*) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

NOTES

The definition of promissory note as given in the Act is much the same as that in Section 83 (1) of the Bills of Exchange

Act. A promissory note may be in the form of a letter (*a*) or in any other form of words which fulfil the requirements of this section, (*b*) and from which the intention to make a note appears. (*c*) It has, however, been held in Madras that it is not necessary to show that the maker of the document did intend to make a promissory note when a document executed by one person to another contains an unconditional promise to pay a certain sum of money to the latter who is sufficiently well indicated. (*d*) The question whether an instrument is a promissory note or not should be judged by the words used. (*e*) It is not enough that the substantial effect of the instrument is to make the executant liable to pay money. A document which contains simply a promise to pay on demand a certain sum to a specified person is a promissory note though there may be no words of negotiability. (*f*) A promise to pay is necessary and even the fact that the document was written on a hundi paper, and was attested cannot make it a promissory note. (*g*) The instrument may be written on paper, parchment, or any other convenient substitute for paper. When the requirements of the section are satisfied, a promissory note is not the less a note because it contains a recital that the maker has deposited title-deeds with the payee, (*h*) or because it is attested by witnesses, (*i*) or because it refers to an agreement, which does not however, qualify the note. (*j*) **Sec. 4.**

"Writing" would be held to include printing, engraving, lithographing, and in fact every mode by which words and figures can be expressed on any material. (*k*) The writing may be in pencil or in ink, but the imperfection of the former mode of writing and its liability to obliteration prevent its being generally adopted. (*l*) **'Writing'**

(*a*) *Wheatley* v. *Williams*, (1836) 1 M. & W. 533.

(*b*) *Brooks* v. *Elkins*, (1836) 2 M. & W. 74.

(*c*) *Sibree* v. *Tripp*, (1846) 15 M. & W. 23. *Cf. Jackson* v. *Slipper*, (1869) 19 L. T. 640; *Paramasivam* v. *Sankaraya*, 9 M. L. T. 94; see also *Burn & Co.*, In re, 37 Cal. 634; *Ratu Lal* v. *Vrij Bhukhan*, 17 Bom. 684.

(*d*) *Paramasivam* v. *Sankaraya*, 9 M. L. T. 94.

(*e*) *Karuthappa* v. *Bava Moideen Sahib*, 36 Mad. 370. Cf. *Kannayalal* v. *Balaram*, 48 M. L. J. 480.

(*f*) *Bankidas* v. *Tanabai*, (1929) Nag. 274.

(*g*) *Mohindra* v. *Nagina*, (1932) Lah. 22; *Reference under Stamp Act*, 8 Mad. 87; also 10 Mad. 158. (F. B)

(*h*) *Ramachandra* v. *Sesha*, 17 Mad. 85; *Wise* v. *Charlton*, (1836) 4 A & E., 786; see *Leeds* v. *Lancashire*, (1809) 2 Camp. 205 (whether on transfer, right to security also passes ?).

(*i*) *Reference under Stamp Act*, 8 Mad. 87; *Reference under Stamp Act*, 17 All. 211; Cf. *Venku* v. *Sitaram*, 29 Bom. 82; *Balakrishna* v. *Govind Pand*, 8 Bom. 297.

(*j*) *Jury* v. *Barker*, (1858) 27 L. J. Q. B. 255; See. 55 M. L. J. (N. R. C.) 14.

(*k*) *Cf.* B. of Ex. Act, Sec. 2.

(*l*) *Geary* v. *Physic*, (1826) 5 B & C. 234.

Sec. 4.

Promise to pay.

In a promissory note there must be an unconditional undertaking to pay, (*a*) and the note must be payable at all events.(*b*) When a promise to pay is said to be conditional, and when not, is explained in Section 5. A letter requesting a loan, and stating that the amount lent will be repaid is not such an unconditional undertaking, because the repayment is dependent on the advance being made. (*c*) But mentioning a place of payment is not such a condition under the section as to make it not a promissory note. (*d*) Mere acknowledgment of an indebtedness is not sufficient. (*e*) But if over and above the mere acknowledgment, a promise to pay can be collected from the words used, the instrument will be regarded as a promissory note. (*f*) Where a *varthamanam* mentioned the amount of cash borrowed, and provided that the executant " shall in two weeks time on returning this sum of Rs.....with interest at rate.....get back the letter ", it was held that there was clearly an unconditional undertaking on the face of the document to repay the borrowed money and that it was not merely an offer to borrow or a mere acknowledgment of indebtedness. (*g*) The question is one of intention as deducible from the words used ; not only must the promise be implied from the fact of indebtedness evinced by the note, but it should be indicated in the note itself in express terms (*h*) or by necessary implication. (*i*) The construction must be reasonable and must be based on words actually used (*j*), irrespective of their effect on the rights of parties.(*k*) A promise will not necessarily be implied because the contract was written on a hundi paper and was attested by witnesses, (*l*) or because the executant styles it as a promissory note.(*m*) An I O U note without more is not a promissory note, but a mere evidence of a debt due.(*n*)

(*a*) *Behari Lal* v. *Allahabad Bank Ltd., Cawnpore*, (1929) All. 664.

(*b*) *Shenton* v. *James*, 5 Q. B. 199.

(*c*) *Bharata Pisharodi* v. *Vasudevan*, 27 Mad. 1 ; *Dhondbhat* v. *Atmaram*, 13 Bom. 669 ; *Narayanasami Mudaliar* v. *Lokambalammal*, 23 Mad. 156 (note); contra *Chinnamma* v. *Ayyanna*, 16 Mad. 283 ; *Nandan Misser* v. *Chaterbati*, 13 B. L. R (App.) 33 ; *Sarja* v. *Sukhi* (1924) Pat. 96 ; *Syed Sikander* v. *Ramchand*, 71 I. C. 968.

(*d*) *Deva Ratna* v. *Fakir Adam*, 4 Bom. L. R. 428.

(*e*) *Laxumi Bai* v. *Ganesh Raghunath*, 25 Bom. 373 ; *Deo Dutt* v. *Maharajlal Behari*, (1929) Oudh 529 ; *Ganga Prasad* v. *Ram Dayal*, 23 All. 502.

(*f*) Illustration (b) ; *Tirupathi Gounden* v. *Rama Reddi*, 21 Mad. 49 ; *Hanmu Ram* v. *Jhanda Singh*, (1929) Lah. 591.

(*g*) *Muthu Sastrigal* v. *Visvanatha Pandara*, 26 M. L. J. 19.

(*h*) *Nundun Misser* v. *Mussamut Chittur*, 21 W. R 146.

(*i*) *Udit Upadhya* v. *Bhawani Din*, 27 All. 84 ; Daniel, Ss. 36, 36 (*a*) ; Cf. *Govind* v *Balwant Row*, 22 Bom. 986 ; *Ellis* v. *Mason*, 7 Dowl. P. C. 598.

(*j*) *Karuthappa* v. *Bava Moideen*, 36 Mad. 370.

(*k*) *Tirupathi Gounden* v. *Rama Reddi*, 21 Mad 49.

(*l*) *Mohindra* v. *Nagina*(1932) Lah. 22.

(*m*) *Ratan Singh* v. *Pirbhu* (1931) All. 301.

(*n*) Illus. (c) ; *Fisher* v. *Leslie*, (1795) 1 Esp. 426; *Gould* v. *Coombs*, (1845) 1 C. B. 543; *Melanotte* v. *Tcesdale*, (1844) 13 M. & W. 216; see *Waithman* v. *Elsee*. (1843) 1 Car. & K. 35 (I. O. U. £85 to be paid May 5, held to be a note) ; also *Brooks* v. *Elkins*. (1836) 2 M. & W. 74.

Sec. 4.

Acknowledging to be accountable for a sum with interest at a certain date (*a*), or acknowledging to be bound to pay adding interest (*b*), or stating "received Rupees 300 cash for interest at so much, having made an agreement, etc.," (*c*) does not import a promise to pay. An instrument containing the words "I owe X, a sum of money which is to be paid by instalments for rent" no time being specified for the instalments, (*d*) or a memo stating "deposited with me Rs. 500 to be returned on demand" (*e*) is not a promissory note. "Borrowed £100 for one or two months, cheque £100 on the Naval Bank" was held merely to be an acknowledgment of the sum received. (*f*) A mere statement of balance in an account imports no promise and the expression 'balance due' implies no promise to pay, (*g*) and does not evidence a new contract which can be sued upon. But, an account stated in which several cross items are set-off one against the other and the balance is struck in favour of one had been held to imply a promise to pay. (*h*) Where, however, a zamindar says in a document "we shall order the borrowed money to be repaid," it was held that it is only another way of saying 'I shall pay.' (*i*) An instrument which is bad as a note, bill or cheque by reason of the inclusion therein of a condition or any other stipulation may be used as evidence of the agreement if properly stamped. An order which is bad as a bill for a similar reason, may be acted upon by the drawee as one authorising him to pay the money to the payee. A direction to pay out of a particular fund may amount to an assignment of so much of the fund.

May be express or implied.

But where in an instrument a promise to pay can be gathered either from express words, or by necessary implication, the instrument will amount to a promissory note. (*j*) Where, for an executed consideration, a note was given expressed to be payable "for £20 borrowed and received" but at the end were the words "which I promise never to pay," Lord Macclesfield rejected the word 'never' (*k*), for "a contract ought

(*a*) *Horne* v. *Redfearn*, (1838) 4 Bing N. C. 433; *White* v. *North*, (1849) 3 Ex. 689; *Hopkins* v. *Abbott*, (1875) L. R. 19 Eq. 222.

(*b*) *Tirupathi Gounden* v. *Rama Reddi*, 21 Mad. 49; *Nanakchand* v. *Ram Sarup*, 78 I. C. 169.

(*c*) *Govind Gopal* v. *Balwanta Rao Hari*, 22 Bom. 986.

(*d*) *Moffat* v. *Edwards*, (1841) Car. & M. 16; *Mitchell* v. *Westover*, 14 Jur. 816; *Follett* v. *Moore*, 4 Ex. 410.

(*e*) *Sibree* v. *Tripp*, (1846) 15 M. & W. 23; *Williamson* v. *Bennett*, (1810) 2 Camp. 417; *Udit Upadhya* v. *Bhawani Din*, 27 All. 84; *Dulmha Kunwar* v. *Mahadeo Prasad*, 28 All. 436.

(*f*) *Hyne* v. *Dewdney*, (1852) 21 L. J. Q. B. 278.

(*g*) *Harivulubhdas* v. *Harivulubhdas*, 8 Bom. 194 (F. B.).

(*h*) *Soraj Prasad* v. *W. W. Bourke* 56 I. C. 379.

(*i*) *Venkatanarayanan* v. *Venkatanarasimha*, (1923) M. W. N. 1005.

(*j*) *Mathurbhai* v. *Dalpat Damodar*, 3 Bom. L. R. 839; *Walker* v. *Roberts*, 1842 Car. & M. 590; *Waithman* v. *Elsee*, (1843) 1 Car. & K. 35; *Imperial Land Company*, In re, 11 Eq. 478, 489.

(*k*) *Simpson* v. *Vaughan*, (1739) 2 Atk. 30.

Sec. 4.

to be expounded in that sense in which the party making it apprehended that the other party understood it." (*a*) This must be taken as an instance of the courts disregarding and rejecting a word, which must have been inserted merely by mistake and not as exhibiting another form in which a valid note may be made. "Due to you Rs.....and payable on a certain date," (*b*) or 'due Rs .....to be paid next January' or even "Rs. 50 received to be repaid" (*c*) or "borrowed in promise of payment" (*d*) are words amounting to a promise to pay, and the instruments containing such words are promissory notes. An instrument in the following terms "I promise to account with A. B. or order for £50 value received by me" is a good note; so also is an instrument bearing the words "I do acknowledge myself indebted to A in £100 to be paid on demand for value received," the words "to be paid" being held to amount to a promise to pay. (*e*) The words "pay or cause to be paid" have been held to constitute a good promise to pay, the alternative expression being held to mean the same thing as 'pay' and used as a matter of caution; (*f*) similarly an instrument whereby the promisee undertakes to pay '*maarfat* another person' is a promissory note. (*g*) Where an instrument contained the words "*Rukka indul talab*," it was held to be a promissory note, as the words "*indul talab*" could only mean "payable on demand". (*h*) Similarly, where in a deed of settlement of partnership accounts, a certain sum was found due to the plaintiff from the defendants which he promised to pay "*wakte zarurat*" and the word 'pronote' also was used, it was held that the deed was a note; (*i*) but where a document recited that the executant had a sum of money belonging to another in his hands and he promised to pay interest thereon, the document was held not to be a note but only an acknowledgment of debt, (*j*) even if such a document calls itself a pronote payable on demand executed to serve as evidence, and to be useful in time. (*k*) The phrase "on demand" inserted in an instrument recognises an obligation and necessarily implies a promise to pay. An undertaking to pay for a suit of clothes to be supplied to another was construed to be only a

---

(*a*) *Allan* v. *Mawson*, (1814) 4 Camp. 115.

(*b*) *Manickchund* v. *Jomoona Doss*, 8 Cal. 645; *Makbul Ahmed* v. *Alfti Khurunissa*, 7 N. W. P. H. C. R. 124.

(*c*) *Kanhaya Lall* v. *Stowell*, 3 All. 581; *Bunsidhar* v. *Bu Ali Khan*, 3 All. 260; see *Vinayak Govind and Narayan* v. *Babaji*, 4 Bom. 230.

(*d*) *Ellis* v. *Mason*, (1839) 7 Dowl. P. C. 598.

(*e*) *Morrice* v. *Lee*, (1725) 8 Mod. 362.

(*f*) *Lovell* v. *Hill*, (1833) 6 Car. & P. 238.

(*g*) *Melaram* v. *Brij Lal*, 54 I.C. 976.

(*h*) *Abdul Ghani Khan* v. *Abdul Majid Khan*, 21 I. C. 199; *Ajudhia Prasad* v. *Riknath*, 50 All. 764.

(*i*) *Mata Prasad* v. *Narain Prasad*, 86 I. C. 482.

(*j*) *Firm Nanakchand* v. *Firm Ram Sarup*, (1924) Lah. 684.

(*k*) *Ratan Singh* v. *Pirbhu*, (1931) All. 302.

guarantee and not a note. (*a*) When there is a clear promise to pay, mere expressions of gratitude or terms of politeness or other needless additions (*e. g.* as per memo of account), (*b*) will not deprive the instrument of its character as a bill or note. (*c*) So, where a condition was added to an instrument in the form of a joint and several promissory note " that no time given to or security taken, etc., from either party hereto shall prejudice the rights of the holder to proceed against any other party " does not deprive it of its character as a promissory note. (*d*) When the promise is clear, a promissory note is none the less a note, because it contains a recital that the maker has deposited title deeds with the payee, (*e*) or it is attested by witnesses. (*f*) A note containing a stipulation that the same shall become void if any dispute shall arise (*g*) or a note containing a promise to pay provided a certain receipt be produced is not valid. (*h*)

Signature.

The Act contains no definition of the term " signature " ; it includes the mark made by a person who is unable to write his name. (*i*) Such signature need not be at the foot or at any particular part of the document. Where the intention of the parties is clear, the position of a signature on a bill is immaterial ; (*j*) if the maker writes his name to a bill or note on any part of it so as to authenticate it, and to give effect to the contract by him thereon, it will be sufficient. (*k*) A signature to a bill may be in pencil ; (*l*) it may be lithographed (*m*) and even printed (*n*) in which case, however, it must be shown to have been adopted and used by the party as his signature, or again, the affixing of the facsimile of a name (*e.g.*) a stamp is good as signature. (*o*) In the case of an ordinary contract where signing was

(*a*) *Jarvis* v. *Wilkins*, (1841) 7 M. & W. 410 ; see also *Leeds* v. *Lancashire*, 2 Camp. 205 ; *Cholmeley* v. *Darley* (1845) 14 M. & W. 344.

(*b*) *Jury* v. *Barker*, (1858) E. B. & E. 459.

(*c*) Daniel, S. 39 ; *Ruff* v. *Web*, (1704) 1 Esp. 129. Cf. *Little* v. *Slackford* (1828) 1 M. & M. 171 ; See *Ellis* v. *Mason*, (1839) 7 Dowl. P. C. 598.

(*d*) *Kirkwood* v. *Carroll*, (1903) I K. B. 531.

(*e*) *Ramachandra* v. *Sesha*, 17 Mad. 85 ; *Wise* v. *Charlton*, 4 A. & E. 786.

(*f*) Reference under Stamp Act, 8 Mad. 87 ; *Ibid*, 17 All, 211 ; Cf. *Venku* v. *Sitaram*, 29 Bom. 82.

(*g*) *Hartley* v. *Wilkinson*, (1815) 4 Camp. 127.

(*h*) *Mason* v. *Metcalfe*, 8 Baxt, 440.

(*i*) Gen. Clauses Act, Sec. 5 (32) ; see *Sadananda Pal* v. *Emperor*, 32 Cal. 550 ; *George* v. *Surrey*, (1830) 1 M. & M. 516. Cf. *Baker* v. *Dening*, (1838) 8 A & E. 94.

(*j*) *National Sales Corpn.* v. *Bernardi*, (1931) 2 K. B. 188.

(*k*) *Mathura Dos* v. *Babu Lal*, 1 All. 683, 685 ; *Mahalakshmi Bai* v. *The Firm of Nageshwar Purshotam*, 10 Bom. 71 ; Daniel, S. 74 ; *Gangaram* v. *Lachiram*, 19 C. W. N. 611 ; *Surajmal* v. *Bank of Behar*, 60 I. C. 746 (Pat.). See also *National Sales Corpn.* v. *Bernardi*, (1931) 2 K. B. 188.

(*l*) *Geary* v. *Physic*, (1826) 5 B. & C. 234.

(*m*) Ex parte *Birmingham Bank Co.*, (1868) 3 Ch. App. 651, 654.

(*n*) *Schneider* v. *Norris*, (1814) 2 M. & S. 286 ; Cf. *Saunderson* v. *Jackson*, (1800) 2 Bos. & P. 238.

(*o*) *Nirmal Chunder Bandopadhya* v. *Sharatmoni Debya*, 25 Cal. 911.

Sec. 4.

required by statute, initials were held to be sufficient compliance with such requirements. (*a*) "But legal analogies must be applied with caution to bills which are the creation of custom, and where it is of the utmost importance that a clear title should appear on the face of the instrument." (*b*) But where a person signs an instrument in an assumed name, he is liable thereon as if he had signed it in his own name. It has been held that, having regard to the practice of Nattukottai Chetties not to sign the letters in their own names but to use the name of the family deity instead, placing their own names at the top of the letter, the name of the deity may be regarded as the signature of the writer. (*c*) The signature of a firm is deemed to be the signature of all the persons who are partners in the firm. (*d*) Though the section requires the signature to be made by the maker, it does not require him to sign by his own hand. An agent with authority may introduce the name of the maker to authenticate the instrument as that of the maker, and such introduction of the name is sufficient signature. (*e*) Thus a note executed by a person under the authority of a marksman is valid though the marksman has not affixed his mark thereto. (*f*) A contract required by law to be in writing and signed by the parties to be charged therewith, may be made on behalf of a company in writing and signed by any person acting under the express or implied authority of the company. (*g*) Where a person himself draws up a promissory note in the form of "I, A. B., promise to pay, etc.," without any signature at the bottom of the instrument, it is impossible not to see that the insertion of the name at the beginning was not intended to be a signature, and that the paper was to be incomplete until it was further signed. (*h*)

Maker certain.

It is of the first importance and indispensable that a bill or note should point out with certainty the party who enters into the contract. (*i*) An instrument in the form of a promissory note without any signature of the defendant but addressed to him in the margin and '*accepted*' by him was allowed to be decla-

---

(*a*) *Caton* v. *Caton*, (1867) L. R. 2 H. L. 27, 143; *Ammayyee* v. *Yalumalai*, 15 Mad. 261; Daniel on Neg. Inst. Sec. 74.

(*b*) Chalmers (9th Edn.) 330.

(*c*) *Chidambaram* v. *Ramaswami*, 27 M. L. J. 631.

(*d*) *Cf*. B. of Ex. Act, Sec. 23.

(*e*) *Mathura Das* v. *Babu Lal*, 1 All. 683, 685; *Maung San Shaw* v. *Hajiko*, 9 Rang. 32; Secs. 26 and 27 *post*. *Cf*. B. of Ex. Act, Sec. 91; Daniel on Neg. Ins, Note 16 to Sec. 74.

(*f*) *Ballayya* v. *Subbayya*, 40 Mad. 1171; *Radhakrishna* v. *S. Subbaraya*, 40 Mad. 550.

(*g*) Indian Companies Act of 1913, Ss. 88 and 89.

(*h*) *Saunderson* v. *Jackson*, (1800) 2 Bos. & P. 238; Cf. *Knight* v. *Crockford*, (1794) 1 Esp. N. P. Cas. 190; *Lemayne* v. *Stanley*, (1798) 3 Lev. 1.

(*i*) *Radhakisan* v. *Mancherdar*, 15 N. L. J. 5.

red on as a note, on the ground that the signature of the defendant, though in form an acceptance, was an adoption of the promise contained in the instrument. (*a*) A promissory note may be made by two or more makers, and they may be liable thereon jointly or severally according to its tenor. No two persons can be liable as makers in the alternative. But a note beginning "I, A.B., promise", and signed "A.B. or else C.D." is a good note against A.B., though it is merely evidence of a conditional agreement by C.D. to pay if A.B. did not. (*b*) Ordinarily, in a joint and several note the makers promise jointly and severally to pay the money; but where a note runs "I promise to pay" and is signed by two or more persons, it is deemed a joint and several note. (*c*) But if the note begins "We promise," and is signed by two or more persons, it is a joint note only. (*d*) Where, however, two persons were to jointly execute a promissory note but one of them fails to execute the same, the note may not be enforceable, even against the other, (*e*) and its enforceability is a question of fact, depending on the intention of the parties and the circumstances of each case. (*f*) A partner may by a joint note bind the firm and himself severally. If three persons jointly and severally execute a note, there are in fact four notes in the same paper. There is the joint note of the three makers and there are also several notes of each of the three. The payee may sue each of them singly, or all of them jointly. (*g*) Where several persons make a joint promise in consideration of money paid to some of them, the contract is not without consideration with respect to the promise by others, and all are equally liable under the promise. (*h*) It is not open to the executant of a note who is liable according to the tenor of the note to prove a contemporaneous oral agreement with the promisee excluding liability. (*i*) If one of the makers pays the note, he is entitled to contribution from the others, and it has been held that contribution can be claimed against the others quite apart from the liability on the note or bill, for instance, even when one of the joint executants had been exonerated in a suit on the bill or note. (*j*)

(*a*) *Block* v. *Bell*, (1831) 1 Moo. and Rob. 149.

(*b*) *Ferris* v. *Bond*, (1821) 4 B & Ald. 679.

(*c*) B. of Ex. Act, Sec. 85, Cl. (2).

(*d*) Byles (19th Edn.) 7.

(*e*) *Amirtham Pillai* v. *Nanjah Gounden*, 26 M. L. J. 257; Cf. *Brahmayya* v. *Rami Reddi*, 16 M. L. T. 185; *Nethri* v. *Mullapulli Gopalan*, 39 Mad. 597.

(*f*) *Bangarasami* v. *Somasundaram*, 27 M. L. J. 176.

(*g*) C. P. Code, O. I. R. 6.

(*h*) *Anant* v. *Sarasvati*, 30 Bom. L. R. 709; *Fanindra* v. *Kacheman*. 45 Cal. 774; *Sornalinga* v. *Pachai*, 38 Mad. 680.

(*i*) *Sornalinga* v. *Pachai*, 38 Mad. 680; *Central Bank of India* v. *Nadirshaw*, (1924) Sind 13.

(*j*) *Abraham* v. *Muthirian*, 27 M. L. J. 746.

Sec. 4.

Sum certain.

The amount promised to be paid by the instrument must be certain, and not susceptible of contingent and indefinite additions or deductions. An instrument promising to pay £65 and all other sums which may be due is too indefinite to be considered a promissory note, as the amount is not specified and cannot be ascertained but by extrinsic evidence; (*a*) nor is an instrument promising to pay a certain sum and all fines according to rule, a promissory note, as the aggregate amount payable is incapable of definite ascertainment.(*b*) An instrument containing a promise to pay a certain sum after deducting therefrom all sums that S may owe the maker on any account is not a promissory note.(*c*) It would seem that the sum payable under the instrument should be made payable all at once, for it has been held, that an instrument containing a promise to pay a certain sum of money within three years with interest at eight annas per cent, per mensem, but provided that interest shall be paid annually, making it possible for the payee to sue for any interest alone, due and unpaid is not a promissory note. (*d*) So also, where in an instrument provision was made for payment of interest at a certain period before the principal has been demanded, or before its due date had arrived, it was held that such an instrument was not for a sum certain. (*e*) But if the amount can be ascertained from the face of the paper, the form of expression is immaterial, *e.g.*, for so many acres at so much per acre, or with the addition of interest at a certain rate, (*f*) or with current rate of exchange at another place. (*g*) If the amount of the note can be ascertained from the instrument itself without extraneous evidence, the omission to state it in the body of the note does not vitiate its character as such.(*h*) Thus, a promise to pay a certain sum with interest at ten per cent with quarterly rests, is certainly for a sum certain, for the term means nothing more than, that when ultimately the interest comes to be calculated, it is to be calculated on a certain basis or system, and by no means gives the holder or the promisee the right to sue for interest apart from the principal. (*i*) It is not only the uncertainty in the sum to be paid that makes the instrument not

---

(*a*) Ill. (d); *Smith* v. *Nightingale*, (1818) 2 Stark, 375; *Bolton* v. *Dugdale*, (1833) 4 B. & Ad. 619.

(*b*) *Ayrey* v. *Fearnsides*, (1838) 4 M. & W. 168.

(*c*) Ill. (e); *Barlow* v. *Broadhurst*, (1820) 4 Moore C.P. 471.

(*d*) *Joti Prasad* v. *Brij Raj*, (1923) Lah. 29.

(*e*) *Pratapchand* v. *Purushothamdas*, 18 Bom. L. R. 124.

(*f*) Reference under Stamp Act, 4 Bom L. R. 912; *Balbhadar Prasad* v. *Maharaja of Betia*, 9 All. 351; *Bansidhar* v. *Bu Ali Khan*, 3 All. 260 (F.B.); *Hutcoman Sahib* v. *Husain Sahib*, 1 M. H. C. R. 152.

(*g*) Sec. 5 *post*.

(*h*) *Maung Poye* v. *Ye Chein Hug*, 1 Bur. L. J. 172.

(*i*) *Lakshminath* v. *Benares Bank Ltd.*, 7 Pat. 41.

a promissory note, but any other general vagueness or indefiniteness in its terms as regards the time during which the payments of instalments are to be made will prevent the instrument from being a promissory note. (*a*) But a promise to pay so many pound (instead of pounds) is not invalid. A bill for twenty-five, seventeen shillings and threepence is a valid bill for twenty-five pounds, etc. (*b*) The word 'sterling' or the words 'lawful money of Great Britain' or any such equivalent words denote the English money or the currency in general use at the place where it is payable. (*c*)

Money only.

It is also necessary that the medium of payment must be money only, *i.e.*, *specie* or other legal currency, and not bonds, (*d*) bills, notes (*e*) or any article other than money. (*f*) But it is not necessary, however, that the money to be paid must be that current in the place of payment, or where the bill is drawn. It may be in the money of any country whatever. Thus, a note, payable in Canada money at New York is good in New York. (*g*) Again, the promise to pay money must not be clogged or involved with other matters of a different character, such as, a promise to "deliver my black horse on the 1st January" (*h*) or to give paddy and also money. (*i*) Again, where a note in addition to promise of money, contained an agreement to give security such as, a life policy, it is void unless the agreement is severable. (*j*) But, it is otherwise where the note recited merely that a real security had been given. (*k*) Where an instrument contains a stipulation that the money or a portion of it shall be paid by a set-off, it is not a promissory note. (*l*)

Payee certain.

A note must point out with certainty the party who is to receive the money; otherwise, the instrument will not be a promissory note. (*m*) Thus, an entry of receipt of money made by a debtor in his creditor's book with the addition that the amount borrowed would be paid on a certain date (but to whom it is not indicated) does not amount to a

---

(*a*) *Carter* v. *Agra Savings Bank*, 5 All. 562.

(*b*) *Phipps* v. *Tanner*, (1833) 5 C & P. 488.

(*c*) Cf. *Kearney* v. *King*, (1819) 2 B. & Ald. 301; see also *Taylor* v. *Booth* (1824) 1 C. & P. 286.

(*d*) *Bolton* v. *Richard*, (1795) 6 T. R. 139; Ex parte *Dixon*, (1795) 6 T. R. 142.

(*e*) Ex parte *Mason*, (1815) 2 Rose 225 (Case of Bank of England notes); Cf. *Boardman* v. *Quayle*, (1855) 11 Moo. P. C. 223.

(*f*) *Martin* v. *Chauntry*, (1748) 2 Stra 1271; *Dixon* v. *Bovill*, (1857) 3 Macq. H. L. 1.

(*g*) Daniel, sec. 58; *Cohn* v. *Boulken*, (1920) 36 T. L. R. 767.

(*h*) Ill. (*h*); *Martin* v. *Chauntry*, (1748) 3 Stra. 1271.

(*i*) *Muttu Chetti* v. *Muttan Chetti*, 4 Mad. 296, 298; *Follet* v. *Moore*, (1849) 4 Ex. 410; *Abhiraj Kuar* v. *Data Din*, (1924) Oudh 106.

(*j*) *Follet* v. *Moore*, (1849) 4 Ex. 410.

(*k*) *Fancourt* v. *Thorne*, (1846) 9 Q. B. 312.

(*l*) *Clarke* v. *Percival*, (1831) 2 B. & Ad. 661; see *Davies* v. *Wilkinson*, (1839) 10 A & E. 98.

(*m*) *Assaram Motiram*, In re; (1929) Sind. 164; *Harkishore* v. *Guru Mia*, 35 C. W. N. 53.

Sec. 4.

promissory note. (*a*) Again, a *khata* in the form of an account stated, contained an unconditional undertaking to pay a certain sum of money only; the *khata* not being expressed payable to the bearer of the document, and the name of the payee not being apparent on the face of it, it was held that the instrument did not amount to a promissory note. (*b*) A document in which the drawer undertakes to pay a specified sum to the plaintiff or order "*maarfat* another person", is an unconditional one. (*c*) The person who is to receive the money, may be certain within the meaning of this section, although he is mis-named or designated by description only. The words 'certain person' mean a person who is capable of being ascertained at the time when the promissory note is made, (*d*) and an instrument which makes the sum specified therein payable on a future date to "the members for the time being" of a firm will not be a promissory note, as the members are not capable of being ascertained on the date on which the document is executed. (*e*) It has, however, been held that a community like the Vysia community of Mogarala can properly be the payee of a note and a suit can be brought on it by a member thereof, with leave of court. (*f*) Again, if money is expressed to be payable to a certain person or his representatives, (such as, the trustees of the W. Chapel or their treasurer for the time being) the mere inclusion of the word 'representatives' will not affect the validity of the instrument as a promissory note, since the money will be payable in the first instance to the person specified and his representatives will be merely his agents to receive the payment on his behalf. (*g*) But, an instrument made payable to "bank, their successors, or assigns or order," is not one payable to a certain person, and hence not a promissory note. (*h*) It is sufficient if the payee is indicated with reasonable certainty so that he cannot be confounded with another person of the same name. When the payee is mis-named, extrinsic evidence is admissible to identify him. (*i*) Under the Evidence Act, when there is a latent ambiguity in the bill as to the identity of the payee, evidence may be let in to show what person

---

(*a*) *Emperor* v. *Kullumal*: *Emperor* v. *Ghulzari Lal*, (1903) A. W. N. 174; *Thackersey* v. *Kishendoss*, (1925) Sindh 9.

(*b*) *Lala Jethaji* v. *Bhaga Gopal*, 3 Bom. L. R. 699; *Chandra Prasad* v. *Varjalal*, 8 Bom. L. R. 644.

(*c*) *Melaram* v. *Brij Lal*, 54 I. C. 976.

(*d*) *Yeo Eng Pwa* v. *Chetty Firm*, 4 I. C. 293 (F. B.); *Cowie* v. *Stirling*, (1826) 6 E. & B. 333.

(*e*) *Yeo Eng Pwa* v. *Chetty Firm*, 4 I. C. 293 (F. B.).

(*f*) *Budavaram* v. *Noota Ibbundram*, 44 M. L. J. 240.

(*g*) *Holmes* v. *Jaques*, (1866) L. R. 1 Q. B. 376; *Yeo Eng Pwa* v. *Chetty Firm*, 4 I. C. 293 (F. B.).

(*h*) *Mercantile Bank of India* v. *D'Silva*, 52 Bom. 810, 826.

(*i*) *Willis* v. *Barrett*, (1816) 2 Stark, 29; see *Abdul Hakim* v. *Ebrahim*, 33 C. L. J. 132.

the description was intended to apply to; but evidence cannot be given when the description is obviously ambiguous or defective; and any holder, by the very form of the instrument, will have notice of the defect. So that, if the description is such that it cannot possibly apply to any person, the instrument cannot be validly indorsed and no person can claim the rights of a holder by virtue of any indorsement, except such rights as he may get by virtue of any estoppel. A note payable to the drawer himself or his order is a nullity, but if indorsed by the maker, it then becomes a note payable to bearer if indorsed in blank, or to the indorsee or order, if specially indorsed. (*a*) Thus, a note made by several persons payable to "our or each of our order" and indorsed by one of them is a good note.(*b*) One of the joint payees may be the maker himself, or the sole payee may be one of the joint makers. In the former case, the instrument does not become a note unless it is to the order of the joint payees, and is indorsed. But, in the latter case, it is valid at the suit of the payee as to the several contracts of his co-makers. (*c*) Under the Common Law, a promissory note could not be made to A.B. or C.D. in the alternative. (*d*) But the English Act provided that a bill may be made payable in the alternative to one of two, or one or some of several payees; and by the Act V of 1914, the legislature has brought the Indian Law in conformity with the present English Law on the subject. (*e*) A note payable "to the Secretary for the time being," was held under the Common Law to be bad; (*f*) but one payable "to the executors or administrators of the late W.B," (*g*) or one payable to the Manager of the Bank (*h*) or one payable in favour of an officer of a Samasthanam (*i*) or one payable to the trustee of a temple by name and office (*j*) has been held good. In this connection reference may be made to the explanation in section 5 which states that if it is clear to whom payment is to be made, he may be a certain person within the meaning of section 4, although he is mis-named or designated by description only. There may be more than one payee indicated by the promissory note, and so a note payable to A, B and C or their order or the major part

(*a*) B. of Ex. Act, Sec. 83 (2); *Brown* v. *De Winton*, (1848) 6 Dow. & L. 82; *Gay* v. *Lander*, (1848) 6 Dow. & L. 75.

(*b*) *Absolon* v. *Marks*, (1847) 11 Q. B. Rep. 19.

(*c*) *Beecham* v. *Smith*, (1858), 27 L. J. Q. B. 257.

(*d*) *Blanckenhagen* v. *Blundell*, (1819) 2 B & Ald. 417; but see B. of Ex Act, Sec. 7, Cl. (2)

(*e*) *Chandu* v. *Ramunni*, 39 M.L.J. 273; see sec. 13 (2) *post*.

(*f*) *Cowie* v. *Stirling*, (1856) E. & B. 6 333.

(*g*) *Hamilton* v. *Aston*, (1848) 1 Car. & K 679.

(*h*) *Damodar Das* v. *Benares Bank*, 5 Pat. L. J. 536.

(*i*) *Venkatarami Reddi* v. *Sri Maharaja*, 59 M. L. J. 548.

(*j*) *Ramanatham Chetty* v. *Kathavelan*, 41 Mad. 353.

Sec. 4.

of them, may be sued upon by all of them. (*a*) A note drawn in the name of a fictitious person as payee may be treated as payable to bearer, and a bill issued with a blank for the payee's name may be filled up by any *bona fide* holder with his own name as payee. (*b*) Where the payee or an indorsee is mis-described, or his name is mis-spelt, the indorsement may be made as is spelt or described in the instrument; perhaps. it is better for the payee to sign as spelt and write underneath, his usual signature. (*c*) In Madras, evidence was allowed to prove that the payee named in a promissory note was not the real payee but that his name was inserted by mistake and that the plaintiff was the real payee of the note. A suit for rectification of the instrument was held to be unnecessary. (*d*) Where a note payable to J, was indorsed by J, and it appeared that there were two Js, father and son, and the indorsement was in the son's handwriting, it was held that though the presumption was that the father was the payee, (*e*) it was rebutted in this case, as the note was in the son's possession and indorsed by him. (*f*)

Place, date, etc.

A statement of the place of execution is not essential to the validity of a promissory note, nor are the parties precluded from dating the note at a place different from that at which it is actually made. (*g*) It is proper to give the place of making the note. But, the place of making the note becomes material for the purpose of determining the forum in which a suit on it has to be brought. The place of making the note is the essential part of the cause of action, so that the court of the place of execution has always jurisdiction to try the suit on the note. (*h*) But, if a note is executed at one place but delivered at another, (*i*) or is agreed to be paid at a third place, (*j*) part of the cause of action arises at each one of these places and a suit may be filed at any place at the option of the plaintiff. Where no place of payment is mentioned, the suit must be filed at the place of execution. (*k*) Where a note is dated with reference to a specified place, the parties should be presumed to have agreed to that place being taken

---

(*a*) *Watson* v. *Evans*, (1863) 1 Hurl & C. 662.

(*b*) *Cruchley* v. *Clarence*, (1813) 2 M. & S. 90; *Attwood* v. *Griffin*, (1826) 2 C. & P. 368; see sec. 20 *post*.

(*c*) See *Williamson* v. *Johnson*, (1823) 1 B. & C. 146, 149; *Willis* v. *Barret*, (1816) 2 Stark 29.

(*d*) *Gopal Rao* v. *Veerappan*, 22 M.L.J. 121; see *Rex*. v. *Box*, (1815) 6 Taunt. 325; *Willis* v. *Barrett*, (1816) 2 Stark 29.

(*e*) *Sweeting* v. *Fowler*, (1815) 1 Stark, 106.

(*f*) *Stebbing* v. *Spicer*, (1849) 8 C. B. 127.

(*g*) *Meenakshi Ginning Co.* v. *Sreeramulu*, 28 Mad. 19; *Deva Ratna* v. *Fakir Adam*, 4 Bom. L. R. 428; B. of Ex. Act, Sec. 3, Cl. (4).

(*h*) *Meenakshi Ginning Co.* v. *Sreeramulu*, 28 Mad. 19.

(*i*) *Winter* v. *Round*, (1863) 1 M. H. C. R. 202.

(*j*) *Laljee Lal* v. *Hardey*, 9 Cal. 105.

(*k*) *Raman Chettiar* v. *Gopalachari*, 31 Mad. 223.

to be the place of the contract.(*a*) If a note executed at one place is delivered at another, the place of delivery must be taken to be the place where the contract was concluded (*b*) as the right of action of an indorsee is dependent upon the indorsement in his favour; there is no doubt that the indorsement forms a part of the cause of action and the indorsee can sue his indorser as well as the other parties to the instrument in the court having jurisdiction over the place of indorsement. (*c*) Dating an instrument is not essential to its validity and if there be no date, the date of delivery of the note or bill will be taken to be its date. (*d*)

Time of payment.

The time of payment is not an essential part of a note, and its omission does not invalidate it, as it is expressly provided that a note in which no time for payment is specified, is to be regarded as one payable on demand. A promissory note may be payable either 'on demand or at a fixed or determinable future time.' The expression 'on demand,' does not mean that the note is payable on actual demand being made. It is only a technical expression meaning immediately or forthwith; (*e*) but, if the note is payable after demand, an actual demand is necessary. (*f*) 'At sight' or 'on presentment' mean 'on demand.' (*g*) If no time of payment is specified in a note, it is payable on demand. (*h*) Again, if the time of payment has been left blank, it is payable on demand; but, in either case, oral evidence is admissible to show the intention of the parties, such evidence being only for the purpose of explaining something about which the document is silent. (*i*) The time of payment and the date of execution are material in calculating the period within which a suit should be instituted. It is usual to insert in a bill or note, a statement that it is for value received, but it is not one of its essential requisites. (*j*) Sometimes, the transaction out of which the obligation arises is also included in the instrument; and it does not affect the character of the instrument.

Kinds of promissory notes.

The section recognises three kinds of promissory notes:—(1) A promise to pay a certain sum of money to a person. This was not negotiable under the Indian law, but was valid as between the immediate parties and capable of assignment as an ordinary chose-in-action

(*a*) *Raman Chettiar* v. *Gopalachari*, 31 Mad. 223.

(*b*) *Muhammad Ishauq Khan* v. *Islam Ullah*, 31 I. C. 698.

(*c*) *Raghoonath* v. *Gobind*, 22 Cal. 451; *Maryamma* v. *Sathiraju*, 31 M. L. J. 816; *Naraindas & Co.* v. *Chandiram & Co.*, (1928) Sind 86; see also *Official Receiver* v. *Naraindas*, (1926) Sind. 31.

(*d*) *Giles* v. *Bourne*, (1817) 6 M. & S, 73.

(*e*) *Hatch* v. *Trayes*, (1840) 11 A. & E. 702.

(*f*) *Meghraj* v. *Johnson*, 31 I. C. 880 (Nag).

(*g*) *Bishunchand* v. *Andu Beharilal*, 40 I. C. 350 (Pat).

(*h*) Sec. 21 *post*.

(*i*) Sec. 19 *post*.

(*j*) Sec. 92, Proviso 2, Evid. Act.

Sec. 4.

though not by negotiation, (*a*) but by Act VIII of 1919 such a note also is now negotiable unless there are words like "only to" which specifically restrict its negotiability. (*b*) (2) A promise to pay a certain sum of money to the order of a certain person. This is nevertheless payable to the person named or his order. (*c*) (3) A promise to pay the bearer, but if the note is made payable to bearer on demand it is invalid under the Paper Currency Act. But a note, payable whenever 'dhani' may require is not invalid. (*d*)

The definition of a promissory note in the section is exhaustive and excludes from the category of promissory notes instruments which do not fall within its terms. (*d*)

Government Promissory Notes.

Government promissory notes are within the above definition; consequently, the presumption is that a transfer of such notes was made for consideration, and the *onus* therefore is in the first place upon the transferor to establish that the transfer by him in favour of another was without consideration. (*e*) These Government promissory notes are issued by the Governor-General in Council on behalf of the Secretary of State for loans raised by them, and they are in a negotiable form, though their indorsement, the liability of the indorsee and their renewal are regulated by a special Act, that is, Act X of 1920 (The Indian Securities Act).

Bank Note.

The definition of promissory note specifically excludes Bank notes and Government currency notes. A 'Bank note' may be defined as any bill, draft or note which is issued by any banker, for the payment of money to the bearer on demand and which entitles the bearer or holder thereof to the payment of the sum of money without any further indorsement. (*f*) A currency note similarly is a note issued by the Government, containing an undertaking by Government to pay the bearer on demand the sum specified in the note. It will be thus seen that both bank notes and Government currency notes satisfy every requisite of a promissory note but they are not merely as promissory notes, securities for money, but they are money and as such they have been excluded from the operation of this Act. But bank notes differ from an ordinary promissory note in that they are not issued by the Government of India, and section 26 of the Indian Paper Currency Act prohibits the issue of such notes.

Currency Note.

(*a*) *Udayar* v. *Muthia*, 7 M. L. J. 231; *Sugappa* v. *Govindappa*, 12 M. L. J. 351; *Jetha Parkha* v. *Ramachandra Vithoba*, 16 Bom. 689; *Kanhaiya Lal* v. *Domingo*, 1 All. 732.

(*b*) *See* sec. 13, Cl. (1) *post*.

(*c*) *Smith* v. *M'Clure*, (1804) 5 East. 476.

(*d*) *Jethaparkha* v. *Ramachandra*, 16 Bom. 689.

(*e*) *Hira Lal* v. *Rajkumar*, 12 C. L. J. 470; see *Hunsraj* v. *Ruttonji*, 24 Bom. 65, 71; *Merbai* v. *Perozbai*, 5 Bom. 268.

(*f*) *Leeds etc. Bank* v. *Walker*, 11 Q.B.D. 84.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Sec. 5.

"Bill of exchange."

A promise or order to pay is not "conditional," within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section 4, although he is mis-named or designated by description only.

NOTES.

The above definition reproduces the result of the English cases and is also in accordance with the definition given by Mr. Daniel, (*a*) who further says that the bill must be an open letter of request. A Bill of Exchange is sometimes also called a draft.

For stamp purposes, the Stamp Act has enacted in section 2,

(*a*) Daniel. Sec. 27.

Sec. 5.

cls. 3 and 22 that a promissory-note, or a bill of exchange includes also instruments drawn payable upon any condition or contingency which may or may not be performed or happen, or which are to be paid out of any particular fund which may or may not be available.

Unconditional order.

"*Unconditional order.*"—This phrase has to be read with para. 2 of the section where "unconditional" is explained to some extent. A bill of exchange must be drawn unconditionally; though the acceptor, or the indorser may make his liability conditional, direction of payment by the drawer must not be made to depend upon a contingency. It is of the essence of a bill or note that it should be payable at all events, and it must appear so on its face. The reason is "that it would perplex the commercial transactions of mankind and diminish and narrow their credit and negotiability, if paper securities of this kind were issued out into the world encumbered with conditions and contingencies; and if the persons to whom they were offered in negotiation were obliged to inquire when these uncertain events would be reduced to certainty. And hence the general rule is that the bill of exchange (or note) always implies a personal general credit not limited to, or applicable to particular circumstances and events, which cannot be known to the holder in the general course of negotiation." (*a*) Another reason suggested against the recognition of conditional bills and notes is that such recognition would make a variety of conditional promises in writing valid without evidence of consideration, and thus materially infringe an established and very salutary rule of law. (*b*) Thus a bill or note payable on a contingency is absolutely void as such, (*c*) but in order to vitiate the bill or note, such contingency must be apparent on the face of it. Not even the happening of the contingent event will cure the defect. (*d*) Accordingly, instruments promising to pay "On the death of G. H., provided he leaves either of us sufficient to pay that said sum" (*e*) or 'if we otherwise shall be able to pay it,' (*f*) or after the marriage of a certain person, (*g*) or on the sale of certain goods, (*h*) or on drafts being honoured, (*i*) or on failure of realising the securities (*j*) or 'as circumstances of the drawer will admit without detriment to him or

(*a*) *Carlos* v. *Fancourt*, (1794) 5 T. R. 482, 485 per Lord Kenyon.

(*b*) *Pearson* v. *Garrett*, (1693) 4 Mod. 242.

(*c*) *Palmer* v *Pratt*, (1824) 2 Bing. 185; *Carlos* v. *Fancourt*, (1794) 5 T. R. 482; see *Richards* v. *Richards*, (1831) 2 B. & Ad. 447.

(*d*) *Hill* v. *Halford*, (1801) 2 Bos. & P. 413.

(*e*) Ill. (*g*) to sec. 4 *ante*. *Roberts* v. *Peake*, (1757) 1 Burr. 323. See *Leeds* v. *Lancashire*, (1809), 2 Camp. 205.

(*f*) *Beardsley* v. *Baldwin*, (1741) 2 Stra. 1151.

(*g*) *Pearson* v. *Garrett*, (1693) 4 Mod. 242.

(*h*) *Hill* v. *Halford*, (1801) 2 Bos. & P. 413.

(*i*) *Williamson* v. *Bennett*, (1810) 2 Camp. 417.

(*j*) *Robins* v. *May*, (1839) 11 A & E 213.

his family,' (*a*) 'at the convenience of the promisor' (*b*) or in instalments ceasing from the death of the promisee, (*c*) are not promissory-notes; nor would an instrument containing such conditions be a bill of exchange. In like manner, an instrument containing an order to pay 'provided that the terms of the letter are complied with' or '30 days after the arrival of the ship *Paragon* at Calcutta,' (*d*) or 'out of the fifth payment when it should be due and allowed by J.S.,' (*e*) or ninety days after sight or when realised, (*f*) is not a bill of exchange. An order for money made conditional upon the signature of a particular receipt, (*g*) unless it is not clear if it is addressed to the drawee (*h*) cannot be either a bill or note. The words 'to be retained' added on the face of a cheque was held not to affect the otherwise unconditional nature of the order to pay contained in it, and that it merely imported a condition between the drawer and the drawee. (*i*)

An instrument which is bad as a bill, note or cheque by reason of the inclusion therein of a condition or any other stipulation may be used as evidence of an agreement, if properly stamped. (*j*) An order to pay money, though bad as a bill, may be acted upon by the drawee as one authorising him to pay the money to the payee. (*k*)

Payment out of a fund.

On the principle above stated, it is required that a bill or note should not be made payable out of a particular fund, as thereby the payment is made dependent upon the existence or sufficiency of such fund. Thus, an instrument containing an order to 'pay a certain sum out of the money in your hands belonging to X company,' (*l*) or 'out of the money due from X as soon as you receive it,' (*m*) or 'out of the money arising from my reversion when it is sold,' (*n*) or 'out of the sale proceeds' (*o*) or 'out of the money due or hereafter to become due under the will of my late father,' (*p*) cannot be a bill of exchange, though it may operate as an assignment of so

(*a*) *Tootell*, Ex parte, (1798) 4 Ves. Jr 372.

(*b*) *Nathoobai* v. *Himatlal*, 23 Bom. L. R. 1231.

(*c*) *Worley* v. *Harrison*, (1835) 3 A. & E. 669.

(*d*) *Palmer* v. *Pratt*, (1824) 2 Bing. 185.

(*e*) *Haydock* v. *Lynch*, (1730) 2 Ld. Raym. 1563.

(*f*) *Alexander* v. *Thomas*, (1851) 16 Q. B. 333

(*g*) *Bavins & Sims* v. *London and S. W. Bank, Ltd.*, (1900) 1 Q. B. 270; *Capital and Counties' Bank* v. *Gordon*, (1903) A. C. 240, 252.

(*h*) See *Nathan* v. *Ogdens, Ltd.*, (1905) 93 L. T. 553, affirmed in 94 L. T. 126 (C. A.)

(*i*) *Roberts & Co.* v. *Marsh*, (1915) 1 K. B. 42.

(*j*) *Bank of Bengal* v. *Radakissen*, 3 M. I. A. 19.

(*k*) *Burn* v. *Carvalho*, (1839) 4 M. & Cr. 690, 702; *Buck* v. *Robson*, (1878) 3 Q. B. D. 686.

(*l*) *Jenney* v. *Herle*, (1723) 2 Ld. Raym. 1361.

(*m*) *Dawkes* v. *De Lorane*, (1770) 3 Wils. 207.

(*n*) *Carlos* v. *Fancourt*, (1794) 5 T.R. 482.

(*o*) *Hill* v. *Halford*, (1801) 2 Bos. & P. 413.

(*p*) *Fisher* v. *Calvert*, (1879) 27 W. R. 301. *Cf.* Ex parte *Shellard*, In re *Adams*, (1873) 17 Eq. 109.

Sec. 5. much of the fund. (*a*) But the statement of a particular fund in a bill of exchange will not vitiate it, if it is introduced merely as a direction to the drawee how to reimburse himself, (*b*) or to show the particular account to be debited, (*c*) or as a statement of the transaction which gives rise to the bill. (*d*)

The promise or order to pay will not be conditional when it is made dependent upon an event which is certain to happen at some time or other, or in other words, an event which is inevitable. If a note or bill is made payable on the death of a certain person, (*e*) or twelve months after notice, (*f*) or on the first January when X comes of age (*g*) will be valid. An instrument payable as per advice or as per memorandum of agreement (*h*) is good as a note or bill of exchange.

'Order.' "Order" in the section does not mean a command, but a request or a direction or any other expression evidencing an intention to cause payment to be made. It need not be in any particular form. Any synonymous expression, or an expression conveying the meaning of "pay" will suffice, such as, 'credit in cash.' (*i*) But the bill is in its nature a demand of a right and not merely the asking of a favour, but the insertion of terms of courtesy will not make the order precatory. (*j*) But a mere supplication made will not amount to an order. (*k*) A note written by a creditor at the foot of an account requesting the debtor to pay that account to A. B. and which the creditor delivered to A. B. for the purpose of his getting in the money for the creditor, is not a bill of exchange or order for payment of money within the Stamp Act. (*l*) Where in pursuance of an agreement to lend money from time to time, the defendant addressed *chits* to the plaintiff requesting him to pay various amounts, it was held that the *chits* were neither bills nor cheques, the agreement not making the plaintiff a banker. (*m*)

Where under the order of the Vice-Chancellor certain moneys were to be retained by the executors under a will subject to the joint

---

(*a*) *Burn* v. *Carvalho*, (1839) 4 M. & Cr. 690, 702.

(*b*) *Mackleod* v. *Snee*, (1726) 2 Stra. 762; *Haussouillier* v. *Hartsinck*, (1798) 7 T. R. 733.

(*c*) *Griffin* v. *Weatherby*, (1868) L.R. 3 Q B. 753; *Guaranty Trust Co., of New York* v. *Hannay & Co.*, (1918) 1 K. B. 43, 55, on appeal (1918) 2 K. B. 623.

(*d*) Re *Boyse*, (1886) 33 Ch. D. 612 at 621; *The Elmville*, (1904) P. 319.

(*e*) *Colehan* v. *Cooke*, (1742) Willes, 393.

(*f*) *Clayton* v. *Gosling*, (1826) 5 B. & C. 360.

(*g*) *Goss* v. *Nelson*. (1757) 1 Burr. 226.

(*h*) *Jury* v. *Barker*, (1858) 27 L. J. Q. B. 255.

(*i*) *Eddison* v. *Collingridge*, (1850) 19 L. J. C. P. 268.

(*j*) *Ruff* v. *Webb*, (1794) 1 Esp. 129; Cf. *Little* v. *Slackford*, (1828) 1 M. & M. 171.

(*k*) Daniel, sec. 35.

(*l*) *Norris* v. *Solomon*, (1840) 2 Moo. & Rob. 266.

(*m*) *Ratulal* v. *Vrijbhukhan*, 17 Bom. 684; *Stamp Act*, In re, 38 P. L. R. 1912.

direction of P. and M. and where M. drew up a document in the form, "To the executors of the late Thomas Harrison, deceased. *Powell* v. *Norwood*. We do hereby authorise and require you to pay to G. P. or his order the sum of £250 being the amount directed by the order of the 29th July last, to be paid to our order. We are, Gentleman, your very obedient servants John Mynn," it was held that the instrument was an incomplete instrument and that the order itself was one carrying out the order of the Vice-Chancellor and not one capable of compelling payment. (*a*) It has however been held that an order issued by the District Board Engineer on the Government Treasury for payment to or order of a certain person is good as a bill. (*b*)

Drawer.

It is essential that a bill should point out with certainty the party who enters into the contract imported by its terms. Thus, the signature of the drawer is necessary and there cannot be a bill, even if the instrument is accepted, without the signature of the drawer. (*c*) Such instrument is an inchoate paper and it is absurd to speak of an acceptor before the bill is signed by the drawer. (*d*) The English Act, however, provides that a bill may be accepted before it has been signed by the drawer. (*e*) If space is left blank to insert the drawer's name a *bona fide* holder may insert it under a presumed authority, and even if it was inserted without authority, the acceptor is still bound to a *bona fide* holder without notice. (*f*) In a bill there can be joint drawers, but never alternate ones. As to the other matters relating to signature, see notes to section 4 *infra*.

Drawee.

The bill in order to be perfect must indicate a drawee who should be called on to accept or pay it. (*g*) He must be named or otherwise stated in the bill with reasonable certainty. Though he is not named, if the place of payment is fixed in the bill, he cannot deny the validity of the bill afterwards, as the incipient imperfection is cured by his acceptance. (*h*) It is on this principle that it has been held that an instrument really a promissory-note but described as a hundi, in which there is no mention of a drawee may become a bill of exchange, if accepted and is indorsed thereon by a third party. It is said that persons who thus indorse the acceptance

(*a*) *Russel* v. *Powell*, (1845) 14 M. & W. 418.

(*b*) *Rangasami* v. *Sankaralingam*, 43 Mad. 816.

(*c*) *Stoessiger* v. *S. E. Ry. Co.*, (1854) 3 E. & B. 549; *McCall* v. *Taylor*, (1865) 34 L. J. C. P. 365; see also *Goldsmid* v. *Hampton*, (1858) 5 C. B. (N. S.) 94; Ex parte *Hayward*, (1871) L. R. 6 Ch. App. 546; *Mason* v. *Lack*, 45 T. L. R. 363.

(*d*) Daniel. Secs. 91 and 92; *McCal* v. *Taylor*, (1865) 34 L. J. C. P. 365.

(*e*) B. of Ex. Act, sec. 18.

(*f*) See sec. 20 *post*.

(*g*) *Reynolds* v. *Peto*, (1855) 11 Ex. 418, on appeal from 9 Ex. 410; *Mason* v. *Lack*, 45 T. L. R. 363.

(*h*) *Gray* v. *Milner*, (1819) 8 Taunt 739; *Peto* v. *Reynolds*, (1854) 9 Ex. 410, 415; Daniel, sec. 97.

Sec. 5.

admitted themselves to be drawees and became liable under the instrument, as the acceptance by them was not inconsistent with the address on the paper. The acceptors having signified their acceptance, are estopped from contending that they are not the acceptors and that they are not the drawees. (*a*) But, this principle cannot apply to a purported bill of exchange which was not signed by the drawer and no person was indicated as the drawee, but, was however accepted by the defendant payable at a bank where he had no account. But, leave was granted to amend the plaint so as to make the claim against the defendant not as the acceptor of a bill of exchange, but as the maker of a promissory-note, and thus made him liable, the amendment being a technical one. (*b*) A bill addressed to one man can in no case be accepted by another. (*c*) A bill may be addressed to two or more drawees whether they be partners or not, but an order addressed to two or more drawees in succession is not a bill of exchange, as there cannot be a series of acceptors. (*d*) In a bill if the drawer and the drawee are the same person, it may be treated as a bill of exchange or promissory-note at the option of the holder, (*e*) when the same has been negotiated. (*f*) If the drawee is fictitious, the instrument is not invalid and the above option still enures to the holder. If the drawee is mis-named or designated by description only, that circumstance alone will not vitiate the bill. (*g*)

Sum certain.

The sum to be paid should be certain, otherwise, the instrument will be invalid as a bill or note. Thus, an instrument containing a promise 'to pay £65 and such other sums as by reference to books,' (*h*) or '£30 and the demands of a sick club,' (*i*) or '£13 and all fines according to rule' (*j*) or 'the proceeds of a shipment of goods valued £2,000,' (*k*) or the balance due to me for building the college chapel (*l*) was held not to be a note. Once it was thought that the provision for future interest in an instrument took away the character of certainty of the amount which is an essential requisite of

---

(*a*) *Jogeshchandra* v. *Mahammad*, 57 Cal. 695.

(*b*) *Mason* v. *Lack*, 45 T. L. R. 363.

(*c*) *Davis* v. *Clarke*, (1844) 13 L. J. Q. B. 305. *Jagannath* v. *Heap & Co.*, 2 I. C. 804.

(*d*) B. of Ex. Act. Sec. 6, Cl. (2); *Jackson* v. *Hudson* (1810) 2 Camp 447.

(*e*) *Capital and Counties Bank* v. *Gordon*, (1903) A. C. 240, 250, *Radhakishan* v. *Hiralal*, 58 I. C. 313; *Bibi Kazmi* v. *Lachman Lal*, (1930) Pat. 239.

(*f*) See notes to sec. 17 *post*.

(*g*) Para. 3 of this section.

(*h*) *Smith* v. *Nightingale*, (1818) 2 Stark. 375.

(*i*) *Jones* v. *Simpson*, (1823) 2 B. & C. 318.

(*j*) *Crowfoot* v. *Gurney*, (1832) 9 Bing. 372.

(*k*) *Bolton* v. *Dugdale*, (1833) 4 B. & Ad. 619.

(*l*) *Ayrey* v. *Fearnsides*, (1838) 4 M. & W. 168; see also *Hamilton* v. *Spottiswoode*, (1849) 4 Ex. 200.

the bill, but now the sum payable by a bill is certain although it is required to be paid :—

(1) with interest (*a*) or

(2) at an indicated rate of exchange or according to the course of exchange, or

(3) by stated instalments (*b*) with a proviso that upon default in payment of any one of the instalments, the whole shall become due. The reason is that the rule requiring precision in the amount of negotiable instruments applies rather to the principal amount than to the auxiliary and incidental additions of interest, or rates of exchange.

Money only.

It is also necessary that the medium of payment indicated in the bill must be money and money only. This has been dealt with under section 4 *ante*.

Certain promisee.

A bill of exchange ought to specify to whom the sum is payable, for in no other way can the drawee, if he accepts it, know to whom he may properly pay it, so as to discharge himself from all further liability. Where a bill is not payable to bearer, the bill must point out with certainty the party who is to receive the money, but he need not be named, if he is otherwise sufficiently indicated. (*c*) Extrinsic evidence is admissible to identify the payee when mis-named or when designated by description only, but not to explain a patent ambiguity, as in the case where the instrument is left blank. (*d*) Thus an instrument containing an order to pay to the administrators of A. or heirs of A, or trustees under the will of A, though A is living, or ' to the order of a person who should thereafter indorse it ' or ' to the now secretary of a certain society ' or ' to the treasurer or agent of a corporation ' is good as a bill though it is otherwise, when it is payable ' to the secretary for the time being of a certain society '. (*e*) But the last is good according to the Bills of Exchange Act in England. (*f*) A bill may be made payable to two or more payees jointly, but it could not under the Common Law be made payable in the alternative to one of two or one of several payees, (*g*) as it would introduce the element of uncertainty with regard to payee; but the rule has since been altered in England (*h*) and

(*a*) *Warrington* v. *Early*, (1853) 23 L. J. Q. B. 47.

(*b*) *Oridge* v. *Sherborne*, (1843) 11 M. & W. 374 ; B. of Ex. Act, sec. 9.

(*c*) *Damodar Das* v. *Benares Bank*, 5 Pat. L. J. 536 ; *Venkatarami* v. *Sree Maharaja*, 59 M. L. J. 548.

(*d*) Evid. Act, secs. 93 and 96.

(*e*) *Cowie* v. *Stirling*, (1856) 26 L. J. Q. B. 335 : *Yates* v. *Nash*, (1860) 29 L. J. C. P. 306 : See also *Damoder Das* v. *Benares Bank*, 58 I. C. 265.

(*f*) B. of Ex. Act, sec. 7 (2).

(*g*) *Blanckenhagen* v. *Blundell*, (1819) 2 B. & Ald. 417.

(*h*) B. of. Ex. Act, sec. 7. cl. 2.

Sec. 5. the Indian Act V of 1914 has brought the Indian law also in conformity with the English law, (*a*) and in Madras it has been held that a Shah Joghi Hundi payable in the alternative to one of several payees is a good negotiable instrument. (*b*) A community may also be the payee of a note, though it consists of a fluctuating body of persons, (*c*) A bill may be drawn payable to or to the order of the drawee, and if it is drawn in that form, the drawee acts in two different capacities, *i.e.*, if he be in business, on his own account, and also as agent for some other person interested in the bill. (*d*) In such a case, it is clear that the instrument is not a bill unless the drawee has indorsed it away. A bill may be drawn payable to, or to the order of, the drawer even. A bill payable to "——order" has been construed to mean "my order," *i.e.*, the order of the drawer and if indorsed by him, it becomes a valid bill of exchange. (*e*)

Stamp, etc. Besides the above requisites, bills and notes to be valid must be stamped according to the provisions of the Stamp Act. A bill is not invalid by reason that it is not dated or that it does not specify the place of payment or the place where it is drawn. Nor is it essential for its validity that it should be dated, though it may be irregular and inconvenient of proof if issued un-dated: A statement of the value is sometimes, or the words "value received" are generally, inserted in a bill or note, but this is not essential. (*f*)

What is the effect of drawing a bill of exchange? According to the English law, drawing a bill of exchange cannot by itself create any obligation between the drawee and the holder. (*g*) If the drawee refuses to accept, or pay it at its due date, the holder cannot sue him for the amount, and his remedy will be only against the drawer and prior indorsers. But when once the drawee has accepted the instrument, his liability on it is fixed, and it will be no defence in a suit against him by the holder to say that he has no funds of the drawer in his hands; for by his acceptance he responds to the requests of the drawer to take up the instrument, and thus becomes the principal party liable. (*h*) But a bill of exchange without such acceptance does not operate as an assignment in favour of the payee of the funds in the hands of the drawee. (*i*) The same is the law in India also; for it is to be noticed

(*a*) See sec. 13 (2) *post*.
(*b*) *Kanyalal* v. *Balaram*, 16 L. W. 608, 611.
(*c*) *Narasimhulu* v. *Nagaramvaru*, 44 M. L. J. 240.
(*d*) *Holdsworth* v. *Hunter*, (1830) 10 B. & C. 449.
(*e*) *Chamberlyn* v. *Young*, (1893) 2 Q. B. 206.
(*f*) B. of Ex. Act, sec. 7. Cl. 4. See notes to sec. 4 *ante*.
(*g*) *Auchteroni & Co.* v. *Midland Bank*, (1928) 2 K. B. 294; *Agra and Mastermen's Bank*, In re. L. R. 2 Ch. App. 391.
(*h*) Sec. 37 *post*.
(*i*) *Shand* v. *Du Buisson*, (1874) L. R. 18 Eq. 283.

that in the chapter dealing with the liability of parties there is no provision as to the liability of the drawee, who has not accepted the bill. The opinion of Mr. Daniel seems to be against this view. (*a*) Sec. 6.

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. "Cheque."

NOTES.

Cheques have many features in common with bills of exchange, and are in many respects governed by the same rules and principles; (*b*) and are often taken to be included in the general term 'bill' in enactments. (*c*) But in their nature and the character of the obligations created by them, they are in some respects different from common bills of exchange; and the circumstances in which they principally differ are :—

(1) They are always drawn on a bank or a banker, and are payable immediately on demand without any days of grace. (*d*) Therefore an order issued by the Dt. Board Engineer on the Government Treasury is not a cheque, as the Government is not a Bank carrying on business for profit. (*e*) It has been held that an instrument is not prevented from being a cheque by reason of the fact that it is drawn by a banker on himself. (*f*) But in the above case no reference is made to the decision of the House of Lords in *Capital and Counties Bank* v. *Gordon*, (*g*) where it was decided that one draft drawn by the branch Bank on its head office was not a cheque. By the latest amendment to the Bills of Exchange Act (*h*) the legislature has preferred to confirm the law stated by Bailhache, J. in Ross's case (*i*).

(2) They require no acceptance apart from prompt payment.

(3) They are supposed to be drawn upon funds in the hands of the banker.

(4) The drawer of a cheque is not discharged by failure of the holder to present it in due time unless the drawer has sustained damage by the delay. (*j*) These differences are pointed out in the well-known passage of Parke, C. B., in the case of *Ramchurn Mullick* v. *Luchmeechund*. (*k*) "A banker's cheque is a peculiar sort of

(*a*) Daniel, secs. 15 to 23.
(*b*) *M'lean* v. *Clydesdale Banking Co.*, 9 A. C. 95, 107.
(*c*) *Sutters* v. *Briggs*, (1922) 1 A. C. 1 at 12.
(*d*) *M'lean* v. *Clydesdale Banking Co.*, 9 A. C. 95, 107; *Ram Sarup* v. *Hardeo Prasad*, 50 All. 309.
(*e*) *Rangasami* v. *Sankaralingam*, 43 Mad. 816.
(*f*) *Ross* v. *London County Westminster and Parr's Bank, Ltd.*, (1919) 1. K. B. 678, 687.
(*g*) (1903) A. C. 240.
(*h*) 22 Geo. V. Ch. 44; Cf. sec. 85 A. *post*.
(*i*) (1919) 1 K. B. 678.
(*j*) Sec. 84 *post*.
(*k*) (1884) 9 Moore P. C. 46, 54, 69;

Sec. 6.

instrument, in many respects resembling a bill of exchange, but in some, entirely different. A cheque does not require acceptance ; in the ordinary course it is never accepted. It is not intended for circulation ; it is given for immediate payment ; it is not entitled to days of grace and though, strictly speaking, it is an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet, in the ordinary understanding of persons it is not so considered. It is more like an appropriation of what is stated as ready money in the hands of the banker, and in giving the order to appropriate to a creditor, the person giving the cheque must be considered as the person primarily liable to pay who orders his debt to be paid at a particular place, and as being much in the position of the maker of a promissory-note or the acceptor of a bill of exchange payable at a particular place and not elsewhere, who has no right to insist on immediate presentment at that place." A cheque presented and paid is no evidence of money lent or advanced by the banker to the customer ; (*a*) on the other hand, it is *prima facie* evidence of the re-payment of money previously lodged by the customer in the banker's hands. (*b*) A cheque once drawn but not presented, is not evidence of money previously lent to the drawer by the payee. (*c*) When a question arises as to whether a debt has been paid, the mere production of a cheque drawn by the debtor in favour of the creditor and paid by the banker will be no evidence of payment. It must be further shown that the cheque, passed through the creditor's hands so that it is always prudent to cause the payee to write his name across the cheque, (*d*) and of course it is not necessary to go on and further show that the debtor paid the cheque to his creditor. (*e*)

Cheque, evidentiary value of.

The definition in the section seems to have been suggested by the judgment of Jessel, M. R., in *Hopkinson* v. *Forster*. (*f*) According to this definition it is necessary that the banker's name should be specified. The definition, as it now stands, is wider than it is intended to be, for it will include demand drafts by a bank upon another or by a branch bank upon the head office, as they are bills of exchange drawn on a bank, but such drafts have been held not to be cheques. (*g*) Besides, such drafts would come under section 26 of the Paper Currency Act, and having regard to this enactment, the term cheque

Demand drafts.

Hopkinson v. *Forster*, (1874) L. R. 19. Eq. 74 ; see also *Keene* v. *Beard*, (1860) 8 C. B. (n. s.) 372, 381 ; *Lynn* v. *Bell*. (1876) 10 Ir. R. C. L. 487, 490.

(*a*) *Fletcher* v. *Manning*, (1844) 12 M. & W. 571.

(*b*) *Pott* v. *Clegg*, (1847) 16 M. & W. 321.

(*c*) *Pearce* v. *Davis*, (1834) 1 Moo. & R. 365.

(*d*) *Egg* v. *Barnett*, (1800) 3 Esp. 196.

(*e*) *Mountford* v. *Harper*, (1847) 16 M. & W. 825 ; *Boswell* v. *Smith*, (1833) 6 C. & P. 60.

(*f*) (1874) L. R. 19 Eq. 74.

(*g*) *Capital and Counties Bank* v. *Gordon*, (1903) A. C. 240, 250. See 22 Geo. V. Ch. 44. Cf, sec. 85 A. *post*.

should be taken to include only drafts other than those mentioned above. The term 'banker' has been already explained under section 3, and a customer is one who has accounts with such a banker either current or deposit or something similar; (*a*) he need not necessarily be a person who has had dealings with the bank for any length of time. The word may well include a person who has opened an account a day before the paying in of the cheque. (*b*)

Sec. 6.

'Banker.'

Payee certain.

As in the case of bills, certainty of payee is a requisite for a valid cheque, but at the time of drawing, a blank space may be left so that it may be filled up by a holder to whom it may be delivered with his own name. (*c*) Recently, a practice has grown up among merchants to draw cheques in the form "Pay A, B, per X", a form mostly used in the case of collection of dividends by a Bank for its customers and sometimes also when an agent is intended to receive the money for the principal. In all these cases, the intention is clear that payment is to be made to A. B. but only through the instrumentality of X who also is to receive the money and give a discharge. (*d*) This practice corresponds to the practice of Nattukkottai Chetties of South India who sometimes direct payments to be made through the "maral" of somebody. (*e*) Again the sum directed to be paid should be distinctly expressed in the instrument both in words and figures to avoid difficulty, but either will do; if there is a discrepancy, the amount stated in words shall be the amount ordered to be paid.(*f*) Sometimes a cheque is post-dated so that it may be paid on a future day named, though it may be negotiated beforehand. (*g*) Such an instrument, or an instrument bearing date on a Sunday is not invalid. (*h*) In point of law it makes no difference between the parties whether a cheque is ante-dated or post-dated; it is still payable on presentment at any time after the date, (*i*) but to ante-date a cheque in order to defraud a third party is a forgery. It is doubtful whether a bank can refuse to pay an undated cheque, but it is not unreasonable for it to do so. In the case of an ordinary joint account of persons not being partners in trade, they all must sign the cheque.

'Maral.'

Dating.

In the case of a banker on whom a cheque is drawn by a customer, there is an implied contract between the drawer and the

(*a*) *Great Western Railway* v. *London & County Bank*, (1901) A. C. 414, 420, 421.

(*b*) *Commissioners of Taxation* v. *English, Scottish and Australian Bank*, (1920) A. C. 683; see sec. 131 *post*.

(*c*) Sec. 18 *post*.

(*d*) *Slingsby* v. *District Bank Ltd.*, (1931) 2 K. B. 588.

(*e*) *Chellappa* v. *Subramaniam*, 8 L. W. 221.

(*f*) Sec. 20 *post*.

(*g*) *Whistler* v. *Forster*, (1863) 32 L. J. C. P. 161.

(*h*) 2 Hals. (2nd Edn.), p. 612.

(*i*) *Walter Mitchell* v. *A. K. Tennent*, 52 Cal. 677, 682; *Royal Bank of Scotland* v. *Tottenham*, (1894) 2 Q. B. 715.

Sec. 7.

drawee that the latter will honour the former's cheque, up to the amount of his credit. (*a*) But as cheques are not bills which require acceptance, the payee cannot enforce payment from the banker in a suit against him. By the drawing of the cheque, there is no assignment created in favour of the payee of the money in the hands of the banker. (*b*) But if, according to the custom of the place, or the usage of traders, the banker marks the cheque as good, it is equivalent to an acceptance, and binds him to pay the cheque in the hands of the payee, or any other holder from him. Without proof of such custom, the only effect of marking or initialling a cheque is to give it additional currency by showing on the face, that it is drawn in good faith on funds sufficient to meet its payment and by adding to the credit of the drawer that of the bank on which it is drawn. (*c*) The cheques when once marked are presumed to be in order and so when they are presented through the clearing house, are paid as a matter of course without even the bankers turning to their customers' accounts to see whether there is anything wrong with them. (*d*)

Marking of cheque.

No days of grace are allowed in case of cheques. (*e*) The drawee having sufficient funds must apply it to the payment of the cheque when presented. (*f*) The necessity for presentment and the consequence of non-presentment are provided for in sections 72 and 84 respectively. As to crossed cheques, see sections 123 to 131.

"Drawer." "Drawee."

7. The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee."

"Drawee in case of need."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

"Acceptor."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the

(*a*) 2 Hals. (2nd Edn.), p. 610.

(*b*) See notes to sec. 31 *post*; *Auchteroni* v. *Midland Bank*, (1928) 2 K. B. 294.

(*c*) See *Gaden* v. *Newfoundland Savings Bank*, (1899) A. C. 281.

(*d*) *Imperial Bank of Canada* v. *Bank of Hamilton*, (1903) A. C. 49, 55; 2 Hals. (2nd Edn.) 610.

(*e*) *M'Lean* v. *Clydesdale Banking Co.*, (1883) 9 A. C. 95, 107.

(*f*) Sec. 31 *post*.

holder or to some person on his behalf, he is called the "acceptor." **Sec. 7.**

When a bill of exchange has been noted or protested for non-acceptance or for better security* and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour." **"Acceptor for honour."**

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee." **"Payee."**

NOTES.

For a bill of exchange regular on its face, three persons are necessary :—(1) The person who gives the order to pay, called the drawer, (2) the person thereby ordered to pay called the drawee, and (3) the person to whom the money is directed to be paid, called the payee. When the drawee so ordered undertakes to pay the bill by signing his assent thereon, he is called the acceptor. Acceptance has been defined, in the English Act, as the signification by the drawee of his assent to the order of a drawer. (*a*) The requisites of a valid acceptance are that it must be written on the bill itself and a mere noting of the hundi in the drawer's register will not do. (*b*) The acceptance has also to be signed by the drawee, (*c*) or by his agent (*d*), though, on proof of local usage an oral acceptance has also been held good in the case of hundis. (*e*) Mere signature without additional words will be sufficient; such acceptance may be made by a duly authorized agent on behalf of the drawee. The usual mode of accepting is for the drawee to write "accepted" across the face of the bill, and then to sign his name underneath. The acceptance need not necessarily be on the face of the bill and an acceptance on its back **Acceptance.**

---

* For the words "when acceptance is refused and the bill is protested for non-acceptance," the words "when a bill of exchange has been noted or protested for non-acceptance or for better security" are substituted by Act II of 1885.

(*a*) B. of Ex. Act, sec. 17 (1).

(*b*) *Guru Das* v. *Khemchand*, 13 Lah. 31.

(*c*) *Ardeshir* v. *Khushaldas*, 32 Bom. 247.

(*d*) *Jogeshchandra* v. *Mahammad*, 57 Cal. 695.

(*e*) *Panna Lal* v. *Hargobind*, 51 I. C. 250; *Guru Das* v. *Khemchand*, (1930) Lah. 471, (on appeal) 13 Lah. 31.

Sec. 7.

has been held sufficient; (*a*) but in all cases it is essential that it should be on the bill itself, otherwise it is a mere nullity. (*b*) Again, the drawee may use any form of words from which the intention to accept can be gathered. It is also essential that the written engagement of the drawee to pay the bill must be in money only, and by no other means, such as, by another bill. (*c*) There is nothing to prevent a bill once dishonoured by non-acceptance from being accepted again, but, however, it is in the option of the holder to allow such bill to be accepted or not, and if he so allows, he is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance. (*d*) If the drawee accepts an overdue bill, the acceptor will then be liable to the payee on demand. (*e*) There need not be any consideration for the acceptance flowing from the holder to the acceptor, for if there was good consideration from the drawer to the payee that is enough to support the acceptance also. (*f*)

An acceptance is not complete, and there is no binding obligation upon the drawee to pay until the accepted bill has been delivered over to the holder or notice of such acceptance has been given to him or somebody on his behalf. At any time before delivery or notice to such holder, the acceptor is at liberty to cancel his acceptance. (*g*) As to what is delivery see section, 46.

The acceptor may sign acceptance even before the instrument is signed by the drawer, or while it is otherwise incomplete. If such acceptor delivers it to be completed with necessary insertions, then he will be bound to the extent warranted by the stamp. (*h*)

Acceptance after death or insolvency of drawer.

Death of the drawer is no revocation of the bill, and it may be accepted by the drawee, though he knows of the death of the drawer, for "when a man enters into a contract and does not intend to be bound in the event of the death of the party with whom he contracts, he should introduce such a stipulation into the contract. * * * Death could not vary the rights and liabilities of third parties." (*i*) But notice of bankruptcy has a different effect altogether, as the money in the hands of the drawee is no longer available for payment of the bill.

(*a*) *Young* v. *Glover*, (1857) 3 Jur. (n. s.) 637.

(*b*) *Ardeshir* v. *Khushaldas*, 32 Bom. 247 (the acceptance being on a copy of bill).

(*c*) *Russell* v. *Phillips*, (1850) 14 Q. B. 891.

(*d*) *Cf.* B. of Ex. Act, sec. 8, Cl. (3).

(*e*) Sec 32 *post*.

(*f*) *Jogeshchandra* v. *Md. Ibrahim*, 57 Cal. 695.

(*g*) *Cox* v. *Troy*, (1822) 5 B. & Ald. 474; *Bank of Van Dieman's Land* v. *Victoria Bank*, (1871) L. R. 3 P. C. 526. See *Bentinck* v. *Dorrien*, (1805) 6 East. 199.

(*h*) See notes to sec. 20 *post*.

(*i*) Cf. *Billing* v. *Devaux*, (1841) 3 M. and Gr. 565, 574; *Attorney-General* v. *Pratt*, (1874) L. R. 9. Ex. 140.

Sec. 7.

A bill can be accepted by the drawee, or by all or some of the drawees mentioned in the bill, (*a*) but it cannot be accepted by a stranger except it be for honour. (*b*) If a stranger writes an acceptance on it, then he is not liable as an acceptor, though it may be he is liable as an indorser. (*c*) If in an instrument no drawee is mentioned, then it is no bill, and any person writing an acceptance thereon may be held liable as maker of a note. (*d*) But it has been held that where an instrument was drawn payable to the drawer or his order at a particular place without being addressed to any person by name and was afterwards accepted by a person residing at the place named, such acceptor was liable on the bill. (*e*) If a bill be drawn upon several persons not in partnership, it should be accepted by all ; (*f*) and if not so accepted, the holder may treat the bill as dishonoured. Such of them as do accept the bill, will be bound by the acceptance, (*g*) but if they are partners, an acceptance by one of them will bind the rest. (*h*) Where a person against whom a bill is drawn by name accepts the bill for or on behalf of a corporation of which he is a member, there is no valid acceptance of the bill. (*i*) Where in bills the drawer and the drawee are the same person, (*j*) or where the drawee is a fictitious person, (*k*) or a person not having capacity to contract, the holder may treat the instrument at his option either as a bill of exchange, or as a promissory-note. (*l*)

Oral acceptance.

Acceptance, though verbal, was sufficient under the Law Merchant and by custom, (*m*) ; but is not so under this Act (*n*) or under the Bills of Exchange Act. (*o*) At Common Law a verbal acceptance was valid, (*p*) and the Common Law still prevails in some of the American States. It was held that the undue retention of a bill by the drawee

(*a*) *Nicholls* v. *Diamond*, (1853) 9 Ex. 154 ; *Jackson* v. *Hudson*, (1810) 2 Camp. 447.

(*b*) *Jagan Nath* v. *Heap & Co.*, 2 I. C. 804 ; *Davis* v. *Clarke*, (1844) 6 Q. B. 16 ; *Bult* v. *Morrell*, (1840) 12 A. and E. 754 ; *Polhill* v. *Walter*, (1832) 3 B. and Ad. 114.

(*c*) See *Jackson* v. *Hudson*, (1810) 2 Camp. 447 ; *Steele* v. *M'Kinlay*, (1880) 5 A. C. 754, 770.

(*d*) *Peto* v. *Reynolds*, (1854) 9 Ex. 410 ; *Fielder* v. *Marshall*, (1861) 30 L. J. C. P. 158 ; *Jogeshchandra* v. *Mahammad*, 57 Cal. 695 ; *Lloyd* v. *Oliver*, 18 Q B 471.

(*e*) *Gray* v. *Milner*, (1819) 8 Taunt. 739 as expld in *Peto* v. *Reynolds*, (1854) 9 Ex. 410, 416 ; see also *Shuttleworth* v. *Stephens*, (1808) 1 Camp. 407.

(*f*) Re *Barnard Edwards* v. *Barnard*, (1886) 32 Ch. D. 447.

(*g*) *Nicholls* v. *Diamond*, (1853) 9 Ex. 154.

(*h*) See *Owen* v. *Von Uster*, (1850) 10 C. B. 318 ; *Nicholls* v. *Diamond*, (1853) 9 Exch. 154 ; Cf. *Odell* v. *Cormack* (1887) 19 Q. B. D. 223.

(*i*) *Ibrahim Fazilbhoy* v. *International Banking Corporation*, (1925) Bom. 252.

(*j*) *Miller* v. *Thomson*, (1841) 3 M. & Gr. 576 ; Cf. *Willans* v. *Ayers*, (1877) 3 A. C. 133.

(*k*) *Smith* v. *Bellamy*, (1817) 2 Stark. 223.

(*l*) Sec. 17, *post*.

(*m*) *Panna Lal* v. *Hargobind*, 51 I. C. 250. See also *Dwarakdas Ayodhiya Prasad* v. *Girdhari Lal*, (1924) All. 129

(*n*) *Gurudas Mal.* v. *Khemchand*, (1930) Lah. 471.

(*o*) B. of Ex Act, sec. 17 (2).

(*p*) *Bank of Ireland* v. *Archer*, (1843) 11 M. & W. 383.

Sec. 7.

might amount to an acceptance. (*a*) A foreign bill might even be accepted by letter. (*b*) The drawee is not bound to accept though he has funds in his hands, unless there is an express or implied contract with the drawer to accept, in which case the drawer may sue the drawee for breach of such contract. The payee cannot sue the drawee, for his liability on the instrument is not fixed, until he puts his signature to it signifying his assent to the order of the drawer. (*c*)

Acceptance of bills in sets.

When a bill is drawn in a set, the acceptance may be written on any part of it, and it must be written on one part only, because though the drawer signs all the parts of the set, if the drawee accepts more than one part, and the accepted parts get into the hands of different holders in due course, he will be liable on every such part as if it were a separate bill. (*d*)

Though the drawer cannot introduce conditions in his order to pay money, it is open to the acceptor to qualify his acceptance on the bill. As to what are qualified acceptances and their effect, see section 86.

'Drawee in case of need'.

Drawee in case of need.—The drawer of a bill, or any indorser may insert therein the name of a person, directing the holder to resort to him in case of need, that is to say in case the bill is not accepted by the drawee when presented, or not paid, when accepted on the due date. In English law such a drawee in case of need is spoken of as "referee in case of need," or in mercantile language as the "case of need" simply. Under section 115 of the Act, a bill is not dishonoured until it has been dishonoured by such a drawee in case of need. The effect of it is to make the presentment to the drawee in case of need obligatory on the part of the holder. In this respect the Act differs from the English law, where to resort to the 'referee in case of need' is optional with the holder. (*e*) Again, under the English law, a Bill must be protested or noted for protest before it can be presented to the 'referee in case of need',(*f*) while under the Act a drawee in case of need may accept and pay the bill of exchange without a previous protest. The drawee, in case of need, may reside at a place different from that where the bill is payable.

As to who can accept for honour, and how it is to be accepted, see sections 108 to 114.

'Payee'.

Payee.—From the definition given in the section it is not clear whether the term "payee" includes the indorsee under a special

(*a*) *Harvey* v. *Martin*, (1808) 1 Camp. at 425.

(*b*) *Billing* v. *Devaux*, (1831) 3 M. & Gr. 565.

(*c*) Cf. Notes to sec. 32.

(*d*) Sec. 133 *post*; *Holdsworth* v. *Hunter*, (1830) 10 B. & C. 449.

(*e*) *Cf.* B. of Ex. Act, sec 15.

(*f*) See secs. 65, 67, 68 and 93 of B. of Ex. Act.

indorsement of a bill or note, as 'instrument' can mean not only the instrument as originally drawn, but also the instrument with indorsements super-added. It would be clearer if the words "by the drawer" be inserted after "named". But from the place in the Act where "payee" is defined, and from sections 9 and 12, it may be gathered that "payee" is used in the limited sense, *i.e.*, a person named by the drawer in the instrument to whom, or to whose order, the money is directed to be paid.

Again, the definition is inappropriate when applied to promissory-notes; for in a promissory note there is no direction for payment but only a promise to pay.

"Holder."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

NOTES.

The legislature has not been happy in its definition of the term "*holder.*" The definition, however, seems to have been borrowed from a passage of Byles in the 13th edition of his book on "Bills," which does not find a place in the later editions.

Who is a holder?

According to the definition, the term "holder" will not include a person, who, though in possession of the instrument, has not the right to recover the amount due thereon from the parties thereto, such as, the finder of a lost instrument payable to bearer, or a thief in possession of such an instrument, or even the payee himself if he is prohibited by an order of court from receiving the amount due on the instrument. (*a*) These persons are included in the definition given in the Bills of Exchange Act in England (*b*) which has the merit not only of being concise, but also of being in accordance with the Law-Merchant.

According to the mercantile law, an owner of a negotiable instrument is a person who under certain circumstances can give a valid discharge for the instrument, and also can give a good title to a person

(*a*) *Subramania* v. *Chokkalinga*, 44 M. L. J. 206; see *Namagiri* v. *Muthu Velappa*, 56 M. L. J. 70, at 73.

(*b*) B. of Ex. Act, sec. 2.

Sec. 8. taking it from him *bona fide*, for value and without notice. The effect of excluding such a *de facto* possessor of the instrument from the definition is not so serious as it might appear at first sight; because the instrument is discharged by a payment in due course under section 82, Cl. (c), if it is one payable to bearer. That section does not require that payment should be made to a holder as defined in this section. As to such a person giving good title to a transferee, though there is no special provision in the Act, still from the provisions of section 58 the inference is easy enough that he can give such a title. Chalmers seems to think that the Act is not consistent in its use of the term 'holder', and he refers to sections. 15, 20, 46, 48, 49 and 78 which, it is submitted, do not support his statement. The second paragraph, perhaps, is the real cause of all these difficulties. The ambiguity of such a provision is well illustrated by Chalmers thus: "Suppose a cheque payable to bearer is lost, and the person who finds it negotiates it to some other person who takes it in good faith and for value, the latter becomes the holder in due course of the instrument; then there are two holders of the same cheque in this case, according to the Act." This absurdity may, however, be avoided if we construe the word 'lost' as 'lost to the world,' that is to say, 'not found again.' This construction is not so far-fetched as as it might appear, as the word following it, namely, "destroyed," does certainly suggest the meaning indicated above.

"*Entitled in his own name.*"—The use of these words in the definition is most significant, and they were inserted by the Legislature for the purpose of preventing any one from claiming the rights of a holder under the Act on the ground that the ostensible holder was a mere benamidar. The doctrine of benami cannot be applied in a case like this where the law by clear implication excludes its application. The application of the doctrine to Negotiable Instruments would introduce an element of uncertainty into them, and hamper commerce. On the other hand, the property in the instruments being transferable by mere indorsement, the benamiship may easily be eliminated. (*a*) Accordingly, no person can sue on a negotiable instrument unless he is named therein as the payee, or unless he becomes entitled to it as indorsee or bearer. (*b*) Where the plaintiff

(*a*) *Vishnu* v. *Achut*, 105 I.C. 780.

(*b*) *Subba Narayana* v. *Ramasami*, 30 Mad. 88 (F.B.); *Sarat Chunder* v. *Kedar Nath*, 2 C.W.N. 286; *Reoti Lal* v. *Manna*, 44 All. 290; *Maung Saw* v. *Ingrasami*, 56 I.C. 259; *Ma Nyi Ma* v. *Ma Maung & Yan Shin*, 57 I. C. 881; *Sesha* v. *Bhavaji Mangal Doss*, 20 M.L.J. 144; *Vishnu* v. *Achut*, 105 I.C. 780; *Madan Lal* v. *Lal Chand*, 49 All. 457; *Subramanya* v. *Arunachella*, 18 M.L.J. 186; *Narayanamurti* v. *Vumamaheshewaran*, (1930) Mad. 197; *Gulabgir* v. *Nathmal*, 27 N.L.R. 327; *Voleti Sreeramulu* v *Gudisa Venkata*, 8 M.L.T. 247 (case of indorsee). *Quaere:* Whether a person claiming under an indorsement of a judge under O. 21, R. 80 of C. P. Code is a holder.

claimed payment of the amount due on a promissory note which was not indorsed to him, alleging that the money advanced thereon was his and was advanced on his behalf, held that the plaintiff could not claim payment. (*a*) So a suit by the Karnavan of a tarwad on a note standing in the name of a deceased female member on the ground that the money advanced is tarwad property is not maintainable, unless he brings the suit as a representative of the deceased ; (*b*) even one of several heirs of a deceased promisee cannot maintain a suit on the instrument in his own name (*c*) though a note in the name of a trustee can be sued on by a succeeding trustee, as the Negotiable Instruments Act does not affect devolution of rights by operation of law (*d*) ; and where a promissory-note stood in the name of one of the members of a joint family who died leaving a widow and it was found that the note was not taken for the benefit of the family but was taken for the benefit of the deceased and the first plaintiff, one of the other members of the family, it was held that neither he nor all the surviving members could maintain a suit upon it. (*e*) When a negotiable instrument is executed in the name of an agent for a principal whose name is disclosed, the latter can sue on the instrument without an indorsement in his favour. (*f*) A benamidar, or a trustee, or guardian who takes a note in his own name is the person entitled in his own name to the possession thereof, and not the *cestui que trust*, or the person or the ward for whom he holds the note ; as such, he alone is the proper person to sue upon it. (*g*) Where, however, it was found that the payee was a mere benamidar for one of the executants of the note who advanced the money for the same, it was held that the payee could not be in a better position than the real owner of the note and that a suit by him was not maintainable. (*h*) But, recently in Calcutta and Patna (*i*) this view has not found full acceptance. It was held that section 78 of this Act speaks only of an effectual discharge to the debtor under the instrument and does not deal with the question of the right of suit. Therefore, it was held, that a person who advanced the money for the negotiable instrument

Benamidar, if holder.

(*a*) *Vishnu* v. *Achut*, 105 I.C. 780.

(*b*) *Chanthiruthi* v. *Veetil Rama*, (1910) M.W.N. 211 ; see *Narayanamurti* v. *Vumamaheshwaran*, (1930) Mad. 197.

(*c*) *Antonisami* v. *Gnanaprakasam*, 12 L. W. 532 ; *Kandhiya* v. *Chandar*, 7 All. 313 (F.B.).

(*d*) *Ramanadhan* v. *Katha Velan*, 41 Mad. 353.

(*e*) *Gopala Aiyangar* v. *Venkata Krishna Aiyangar*, 26 M.L.J. 224.

(*f*) *Subramanya* v. *Subban*, 21 L.W. 696.

(*g*) *Ramanuja* v. *Sadagopa*, 28 Mad. 205 ; *Bando* v. *Jambu*, 12 Bom. L. R. 801 ; *Chanthiruthi* v. *Veetil Rama*, (1910) M.W.N. 211 ; *Po Htin* v. *Saw Hla*, (1930) Rang. 243.

(*h*) *Raman* v. *Pasupathy*, 24 M.L.T. 502 ; *Surjug Singh* v. *Deosaran*, (1930) Pat. 313.

(*i*) *Brojo Lal* v. *Budh Nath*, 55 Cal. 551 ; *Surjug Singh* v. *Deosaran*, (1930) Pat. 313.

Sec. 8.

can sue thereon, though the note is not taken in his name and the payee therein is a third person who is a benamidar himself. The learned judges have applied the general law of benami to such a case and held, disagreeing with the Madras and Allahabad cases, that a suit was maintainable, especially as the payee under the instrument came forward to support the claim of the plaintiff. It was said that the Law Merchant of England was never applied in the moffussil, while the Act is applicable, and in order to construe the Act "it would be travelling too far if you go to see what the Law Merchant was." Therefore, construing the Act as it stands, the learned judge came to the conclusion that there was no prohibition in the Act against the true owner of the instrument bringing the suit thereon. It was said, however, that in such a suit, the special rules of evidence contained in chapter XIII of this Act would not apply. In a still more recent case (*a*) the learned judges dissented from this view and restored the law to what it was understood to be before that decision. Where a bill is indorsed for collection, and is returned by the indorsee to the indorser, the former ceases to be the holder within the meaning of section 8 of the Act even though the bill is not re-indorsed. (*b*) Where a bill or a note has been indorsed in favour of a certain person and there is nothing in the indorsement itself that it should be for collection only, the indorsee is a holder within the meaning of the section and is entitled to sue on the instrument. (*c*)

The phrase "entitled in his own name to the possession thereof" though significant, is not a happy one. This phrase does not convey the idea that possession of the instrument is necessary to constitute a person as a holder. (*d*) All that is required is "entitled to the possession thereof." Probably, the phrase is used to signify that a mere agent possessing the note is not a holder. Thus, where a promissory note executed in favour of A as agent of B was indorsed to plaintiff signed merely A, it was held that the plaintiff was not entitled to sue on the note. (*e*) Having regard to the habits of the people in this country, the inference was perfectly justifiable that the description of A as agent of B was intended to denote the character in which the

(*a*) *Harikishore* v. *Gura Mia*, 58 Cal. 752.

(*b*) *Subramanian* v. *Alagappa*, 30 Mad. 441, 443; *Ponnaya* v. *Palaniappa*, 7 M.L.T. 271; *Alagappa* v. *Karuppayya*, 3 M.L.T. 239; *Jameson & Co* v. *Scott*, 36 Cal. 291. As to striking of indorsements, see also note to sec. 40 *post*; but see *Ghulam* v. *Ram Ditta*, (1930) Lah. 248.

(*c*) *Ramzan Ali* v. *Vellasami*, 8 I.C. 967; *Patoju Sangayya* v. *Patoju Sanyasi*, 23 I.C. 545; see *Ram Ballab* v. *Bickraj*, 19 I.C. 88.

(*d*) See *Narayanamoorthi* v. *Vumamaheswaran*, (1930) Mad. 197.

(*e*) *Veeraiyan* v. *Ponnusami*, 36 Mad. 362; see *Subramania* v. *Subban*, 21 L.W. 696.

note was executed in his favour; the description might not be conclusive, but in the absence of any evidence that A was the beneficial owner, he may be regarded only as an agent. The word 'entitled' makes it clear that the title of the person claiming as holder must be acquired in a proper manner. A person taking an instrument under a forged or under an invalid (*a*) indorsement, a thief or a finder of a bill is not a 'holder.' (*b*) It has been held that a person obtaining an instrument by indorsement from a person who has been prohibited by order of Court from transferring and with knowledge thereof is not a holder under the section (*c*) A mere assignee of the instrument is not included in the term 'holder.' When the holder of a negotiable instrument dies, the property in it passes to his heir who then becomes the holder thereof. (*d*) The same result follows in all cases where the property in a bill or note is transferred by operation of law. (*e*)

"Holder in due course."

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

NOTES.

The words 'payable to order' were substituted by Act VIII of 1919 for the words "payable to, or to the order of, a payee."

Holder in due course.

The phrase "holder in due course" shortens considerably the cumbrous English equivalent "*bona fide* holder for value without notice"; and both the Indian and the English Acts have adopted this phrase. The definition of holder in due course is fuller in the English than in the Indian Act. (*f*)

(*a*) *Veeraiyan* v. *Ponnusami*, 36 Mad. 362; see *Subramania* v. *Subban*, 21 L. W. 696.

(*b*) See notes to sec. 58 *post*.

(*c*) *Subramania* v. *Chockalinga*, 46 Mad. 415; *Namagiri* v. *Muthu Velappa*, 56 M.L.J. 70 at 73.

(*d*) See notes to sec. 29, *post*

(*e*) *Sowcar Lodd Govinda Doss* v. *Muneppa*, 31 Mad. 543, followed in *Lodd Govinda Doss* v. *Munusami*, 9 M.L.T. 169.

(*f*) In re *Kannusami* 8 M.L.T. 463; *Mowji Shamji* v. *National Bank*, 25 Bom. 499. B. of Ex. Act, sec. 29 (1).

Sec. 9.

Valuable consideration.

It is necessary that a holder to be a holder in due course, must have acquired the bill, note or cheque for consideration. (*a*) Such consideration must be a valuable consideration, and not merely a good consideration. Valuable consideration consists either in some right, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given or suffered or undertaken by the other. (*b*) It must be of some conceivable value to the promisee sufficient to support a simple contract. (*c*) Forbearance to sue even for an unspecified short period (*d*) is sufficient consideration for a fresh contract based upon it (*e*) even though the forbearance was agreed to be shown to a third person; (*f*) and it has been held, that where a promissory-note is executed by A in favour of B in consideration of C, a relation of B, forbearing to sue on a prior promissory note executed by A in favour of C, the note in favour of B is not without consideration. (*g*) A transfer made in consideration of marriage is valid; the definition in section 2 of the Contract Act being wide enough to include such a case. (*h*) Past consideration will, under the Indian law, support a bill or note; and so will past services done at the request of the promisor be a sufficient consideration for a subsequent promise to pay for it. (*i*) An antecedent debt or liability (*j*) or a fluctuating balance in an account between the parties, (*k*) or the debt of a third person, (*l*) or abandonment of civil proceedings, (*m*) or the compromise of a doubtful claim, (*n*) or a promise to deliver up a will, though found to be invalid, (*o*) or release of a claim made *bona fide*, though the claim was found untenable on subsequent investigation, (*p*) or a debt barred by the Statute of Limitation, (*q*) though the

---

(*a*) *Bishen Chunder* v. *Maung Po Thwe*, U.B.R. (1897-1901) 523.

(*b*) *Currie* v. *Misa*, (1875) L.R. 10 Ex. 153, 162; *Fleming* v. *Bank of New Zealand*, (1900) A.C. 577; *Maung Me.* v. *Ma Sein*, 5 L.B.R. 192.

(*c*) See Ind. Contract Act, sec 2 (d); see also notes to sec. 58 *post*.

(*d*) *Anant* v. *Sarasvati*, 30 Bom. L. R. 709.

(*e*) *Srinivasaraghava* v. *Ranganathan*, 36 M.L.J. 618; *Fanindra* v. *Kachaman*, 45 Cal. 774; *Nanjundasami* v. *Kanakaraju*, 36 M.L.J. 242.

(*f*) *Fullerton* v. *Provincial Bank of Ireland*, (1930) A.C. 309, 313.

(*g*) *Mt. Abida Begum* v. *Ramchandran*, (1923) Oudh, 176.

(*h*) *Maharaja* v. *Sendanatha*, (1918) M. W. N. 173.

(*i*) *Sindha* v. *Abraham*, 20 Bom. 755.

(*j*) *Poirier* v. *Morris*, (1853) 2 E. & B. 89.

(*k*) *Pease* v. *Hirst*, (1829) 10 B. & C. 212.

(*l*) *Balfour* v. *Sea, Fire, Life Assurance & Co.*, (1857) 27 L. J. C. P. 17; see also *Crears* v. *Hunter*, (1887) 19 Q. B. D. 341; *Jagadindra* v. *Chandra*, 31 Cal. 242.

(*m*) *Bourke* v. *Mealy*, 14 Cox. C. C. 329.

(*n*) *Cook* v. *Wright*, (1861) 30 L. J. Q. B. 321; *Gulabchand* v. *Kamal Singh*, 44 All. 424; *Rameshwar Das* v. *New Jooria Sugar Co.*, 94 I. C. 871.

(*o*) *Smith* v. *Smith*, (1863) 32 L. J. C. P. 149.

(*p*) *Ajodhyaja* v. *Cox*, 48 I. C. 701 (Pat).

(*q*) *Mullins* v. *Beddy*, 6 N. W. P. H. C. R. 150; *Chatur Jagsi* v. *Tulsi*, 2 Bom. 230; *Raghoji* v. *Abdul Karim*, 1 Bom. 590; 35 M. L. J. (sh. n.) 29 (case of barred decree debt); 14 L. W. (sh. n.) 21.

note contains no reference to the barred debt, (*a*) or the debtor knows that the debt is barred, (*b*) or discharge from arrest, (*c*) or an obligation on the part of a person to restore stolen property, (*d*) when it is not for stifling prosecution, (*e*) is sufficient to constitute a valuable consideration for a negotiable instrument. A sum promised to be paid in consideration of the payee not competing with the maker in the purchase of property is recoverable. (*f*) The mere giving of a thing which a person is already bound to give is not a consideration for a new promise to pay. (*g*) A mere moral obligation (*h*) or a debt represented to be due though not really due (*i*) or the giving up of a prior void instrument, (*j*) or a promise to pay a witness as compensation for his loss of time in attending the court, (*k*) or a voluntary gift of money, (*l*) or a debt in respect of which the promisor has obtained his discharge under the Insolvency Act, (*m*) does not form valuable consideration. It is necessary that the consideration should be a lawful consideration. It should not be forbidden by law, nor if permitted, defeat the provisions of any law; it should not be fraudulent or immoral or opposed to public policy and it should further not involve any injury to the person or the property of another. (*n*) A discounter is a holder for value, and if he takes it under circumstances mentioned in the section he will be a holder in due course. (*o*) The position of a discounter of a bill is that of a holder for full value, but the discount must be a real one and not a mere book-keeping entry. (*p*) The discount of a bill is to be distinguished from the pledge or deposit of a bill as security. (*q*)

Past consideration.

It was formerly thought that an antecedent debt or liability was not a sufficient consideration for a bill payable on demand. (*r*) But

---

(*a*) *Ganapathi* v. *Munisami*, 5 I. C. 754 (Mad.).

(*b*) *Mati Sheikh* v. *Baikantha*, 18 C. L. J. 269.

(*c*) *Pelkington* v. *Green*, 2 Bos. & P. 151.

(*d*) *London & County Bank* v. *River Plate Bank*, (1888) 21 Q. B. D. 535 (C. A.).

(*e*) *Jai Kumar* v. *Gauri Nath*, 28 All. 718.

(*f*) *Rungiah* v. *Hajee Fakir*, 10 M. L. T. 338.

(*g*) *K. P. Nambiar* v. *Sundrabai*, 14 I. C. 813.

(*h*) *Eastwood* v. *Kenyon*, (1840) 11 A. & E. 438.

(*i*) *Southall* v. *Rigg*. (1851) 11 C. B. 481.

(*j*) *Edwards* v. *Chancellor*, (1888) 52 J. P. 454; *Coward* v. *Hughes*, (1855) I K. & J. 443.

(*k*) *Collins* v. *Godfray*, 1 B & Ad. 950.

(*l*) *Hill* v. *Wilson*, (1873) 8 Ch. A. C. 888, 894.

(*m*) *Naoroji* v. *Kazi Siddick*, 20 Bom. 636.

(*n*) See Indian Contract Act, secs. 10 and 23 and notes to sec. 58, *post*.

(*o*) Ex parte *Schofield*, (1879) 12 Ch. D. 337 C. A.

(*p*) Ex parte *Richdale*, (1882) 19 Ch. D. 409; Daniel, sec. 779 b; see also notes to sec. 131, *post*.

(*q*) Ex parte *Twogood*, (1812) 19 Ves. 227; Ex parte *Schofield*, (1879) 12 Ch. D. 337 C. A; *Sheo Prasad* v. *Gobind Prasad*, 49 All. 464.

(*r*) *Rustamji, A. Devar* v. *Ratanji* R. *Wadia*, 7 B. H. C. R. (O. C. J.) 9.

Sec. 9.

this doctrine was finally over-ruled in *Currie* v. *Misa* (*a*) in England, and the question is no longer material in England in view of the provision in section 27 of the Bills of Exchange Act which enacts that valuable consideration may be constituted by an antecedent debt or liability, whether the bill is payable on demand or at future time, and in India such a consideration is good under the Indian Contract Act;(*b*) so that services rendered at the desire of the defendant during the minority, and continued after minority, were held to constitute good consideration for an agreement to compensate for such services. (*c*) A Bank holding a bill for collection with a lien on the bill has been held to be a holder for consideration. (*d*)

Considera-tion operates only once

A consideration can operate as such only once, and the self-same thing which was a good and valuable consideration for one promise, cannot operate as a consideration for another promise made subsequently; so a promissory-note executed by a person on attaining majority in consideration of the money advanced to him on a promissory note executed by him while a minor and so void, was held not binding on him as the money advanced can operate as consideration only once. (*e*)

Where the holder has a lien upon a negotiable instrument arising either from express contract or by implication of law or holds it as a pledgee, he is deemed to be a holder for value to the extent of his lien or of his advance. (*f*) He is, however, entitled to the full amount, if his transferee could have sued on the instrument, but if otherwise, he can recover only the amount of his lien or advance. (*g*) In the former case he becomes a trustee for the surplus beyond the amount of his lien or advance. The pledgee must use reasonable diligence with reference to the negotiable instrument pledged to him, having regard to the peculiar nature of the thing pledged. He must not part with it. He must, if he can, collect it at maturity. (*h*) If he cannot, he must give the proper notices of dishonour. (*i*) Where certain Government

(*a*) (1875) L. R. 10 Ex. 153; see *M'Lean* v. *Clydesdale Banking Co.*, (1883) 9 A. C. 95, 111.

(*b*) Ind. Contract Act, sec. 2 (d); see *Daulataram* v. *Nagindas*, 15 Bom. L. R. 333.

(*c*) *Sindha* v. *Abraham*, 20 Bom. 755.

(*d*) *Royal Bank of Scotland* v. *Rahim Cassum*, 49 Bom. 270.

(*e*) *Ramaswami Pandia* v. *Anthappa*, 16 M. L. J. 422; *Anglo-Indian Trading Co.* v. *G. F. Brierly*, 9 M. L. T. 17; Cf. *K. P. Nambiar* v. *Sundrabai*, 14 I. C. 813 but see *Mussammat Kundan Bibi* v. *Sree Narayan*, 11 C. W. N. 135.

(*f*) B. of Ex. Act, sec. 27 (3); Cf. *Muthukrishna* v. *Veeraraghava*, 38 Mad. 297. (where the mortgagee of a note was held entitled and bound to sue on it in time and on default, he was accountable to the mortgagor) Cf. also *Mulraj* v. *Viswanath*, 37 Bom. 198 (P. C.) (where hypothecation is regarded as an assignment within sec. 130 of T. P. Act).

(*g*) *Peacock* v. *Purssell*, (1863) 14 C. B (n. s.) 728.

(*h*) *Muthukrishna* v. *Vira Raghava*, 38 Mad. 297.

(*i*) *Johnson* v. *Kennion*, (1765) 2 Wilson 262; *Reid* v. *Furnival*, (1833) 1 Cr. & M. 538.

securities belonging to an estate had been indorsed in blank in favour of certain banks to secure the re-payment of a loan borrowed and the securities were sold by the bank through a broker, it was held that the banks were not merely pledgees but were also holders for value of the securities to the extent of the sum for which they had a lien, and the delivery of the bonds after indorsement, passed to the banks the legal title and not merely the equitable title. (*a*) A holder in due course of a pronote is entitled to a charge on any property which his transferor may possess. (*b*)

Donee of negotiable instrument.

The donee of a negotiable instrument is not a holder in due course, as he is not a holder for value. He succeeds to the rights of his transferee, and if the donor be a holder in due course, the donee *ipso facto* acquires all the rights of a holder in due course. The donee cannot maintain an action against the donor on the instrument ; (*c*) but he can sue the prior parties subject to the equities attaching to the instrument in the hands of his transferor. (*d*) He can negotiate the instrument to a third person who, if he is a holder in due course, can sue the donor.

When some consideration has been proved, the courts do not go into the question of its adequacy. (*e*) Inadequacy of consideration is neither sufficient to invalidate a negotiable instrument, nor is it a good defence to an action on it, though the adequacy or otherwise of it may be taken into consideration in order to ascertain the *bona fides* of the transaction. (*f*) Inadequacy of consideration must be distinguished from absence or failure of a part of the consideration, in which case, the instrument will not be valid to that extent between parties in immediate relationship. In the case of unconscionable bargains, where the parties contracting are not on a footing of equality, the Courts may interfere and give relief. (*g*) Where interest is found to be excessive, the burden of upholding the transaction shifts to the creditor, and he can show that despite the high rate, the transaction was in fact fair and reasonable. (*h*) Urgent need of money on the part of the borrower is

(*a*) *Osmond Beeby* v. *Khitish Chandra*, 41 Cal., 771.

(*b*) *Gulam Hussein* v. *Clara D'Souza*, 53 Bom., 819.

(*c*) See *Milnes* v. *Dawson*, (1850) 5. Ex. 948 ; *Holliday* v. *Atkinson*, (1826) 5 B & C 501 ; In re *Whitaker*, (1889) 42 Ch. D. 119.

(*d*) *Easton* v. *Pratchett*, (1835) 1 Cr. M. & R. 798, 808.

(*e*) *Solomon* v. *Turner*, (1815) 1 Stark 51 ; *Cf.* Ind. Contract Act, sec. 23. Expl. 2.

(*f*) *Goursimull* v. *Dhansuk Das*. 7 B. L. R. 289, 292 (Note); *Bhuputram* v. *Hari Prio Coach*, 5 C.W.N. 313. Cf. *Jones* v. *Gordon*, (1877) 2 A.C 616, 631. See also *Administrator General of Bengal* v. *Juggeswar Roy*, 3 Cal. 192.

(*g*) Ind. Contract Act, sec. 16. Cf. *Ibid*, sec. 23. Expl. (2) ; Re *A. Debtor*, (1903) 1 K. B. 705 ; *Samuel* v. *Newbold*, (1906) A. C, 461.

(*h*) *Samuel* v. *Newbold*, (1906) A. C. 461. See also *Carringtons, Ltd.* v. *Smith* (1906) 1 K. B. 79 at 86, 87.

Sec. 9.

no evidence that the lender was in a position to dominate the will of the borrower. (*a*) It must be shown that the lender took advantage of the necessity and of the mental distress of the borrower and imposed unconscionable terms. (*b*) But, where fraud or some other circumstance is relied on to relieve the executant from his liability to pay the whole amount, the onus is entirely on him to establish that. (*c*)

Under the section, it is necessary for a person to be a holder in due course that he should get possession of the instrument if it is payable to bearer, or he must be the payee or the indorsee if payable to, or to the order of, the payee. In the latter case also, delivery of the instrument to the payee or to the indorsee is necessary, for no contract on a negotiable instrument is complete without such delivery. (*d*) A mere assignment of an instrument payable to bearer not followed by delivery of possession will not make the assignee a holder in due course; nor will a mere delivery to a person (other than the payee) without an indorsement in his favour of an instrument payable to order make such a person a holder in due course. Under the English law, there was a conflict of authority on the question whether the payee can be said to be a holder in due course; (*e*) but it has now been finally decided by the House of Lords that the payee of a note is not a holder in due course. (*f*) Under the Act, however, the point has been put beyond controversy by the special mention of payee in the section. (*g*)

Before 'payable.'

Again, the person taking the instrument should become the holder of it before the amount mentioned in it became payable. (*h*) As to when an instrument becomes payable, see sections 22 to 25. The expression used in the English Act "before it (the instrument) becomes overdue," seems to be better, more definite and clearer than the phrase used in the Act (*i*), for according to the strict construction of the phrase, it would appear that a person taking an

---

(*a*) *Mt. Bashiram* v. *Bhishamber*, (1922 Oudh) 288.

(*b*) *Maharaj Prag Din* v. *Bagharati Saha*, 66 I. C. 687, (Oudh); *Ganesh* v. v *Vishnu*, 32 Bom. 37; *Dhanipal* v. *Maneshar*, 28 All. 570.

(*c*) *Doss* v. *Rangasami*, (1927) Rang. 188.

(*d*) *Chapman* v. *Cottrell*, (1865) 34 L. J. Ex. 186; *Mangamma* v. *Sathiraju*, 31 M.L J. 816; *Smith* v. *Mundy*, (1860) 29 L. J. Q. B. 172. See also *Venkataramiah* v. *Official Assignee of Madras*, 33 Mad. 196; In re *Beaumont*, (1902) 1 Ch. 889.

(*e*) *Lewis* v. *Clay*, (1897) 67 L.J.Q.B. 224; *Herdman* v. *Wheeler*, (1902) 1. K. B. 361; but *Lloyd's Bank, Ld.* v. *Cooke*, (1907) 1 K. B. 794; compare also *Dey* v. *Mayo* (1920) 2, K.B. 346 and *Sutters* v. *Briggs*, (1922) 1 A.C. 1.

(*f*) *Jones* v. *Waring and Gillow*, (1926) A.C. 670.

(*g*) *Lloyd's Bank* v. *Chartered Bank of India*, (1929) 1 K B. 40, 57.

(*h*) *Ramanadan* v. *Gundu*, (1928) M.W.N. 680.

(*i*) *Ram Sarup* v. *Hardeo Prasad*, 50 All. 309, 312.

Sec. 9.

instrument on the day on which it is payable will not be a holder in due course, as he takes it after it becomes payable though before it is overdue, the person paying having the whole day to pay the money in. But that person will not be affected by any defects in the title of his transferor, for under section 59 he does not take it after maturity. Again, the phrase is misleading when applied to instruments payable on demand, especially to promissory notes, as they are in a sense payable at once. (*a*) The reason of the rule requiring the holder in due course to get possession of the instrument before it becomes payable is that if a negotiable instrument is found in circulation after it is due, it carries suspicion on its face as to why it has not been taken up at its due date and paid. A person taking a stale cheque (drawn over 6 months back) is put on sufficient notice that payment was overdue and if the transferor was not a holder in due course as claiming under a fictitious indorsement, the transferee cannot have better rights. (*b*)

English Law.

"*Without having sufficient cause to believe, etc.*"—Under the English law, the only question is whether the holder in taking the instrument acted honestly though blunderingly or stupidly, and it is immaterial that it was taken negligently, if in fact there was no bad faith. All that is necessary is that the holder should take the bill in good faith, (*c*) and an act is deemed to be done in good faith according to the Bills of Exchange Act, when it is done honestly, whether it is done negligently or not (*d*) Negligence however gross will not affect his title, if it stops short of fraud. (*e*) Failure by the transferee to avail himself of the means at his disposal to detect the bad title of his transferor is no defence to an action on the instrument by the transferee. (*f*) But if the holder has any suspicion that there was something wrong, but refrains from asking questions or making inquiries, lest he should come to know of any defect in the title, then it is dishonesty on his part, and he will not be a holder in due course. (*g*) But the mere fact that a broker brings a block of securities, and pledges them with a banker against his general account and allows them to remain as security for a considerable time, has been held not to be sufficient to put the banker on

---

(*a*) See notes to sec. 59, *post*.

(*b*) *Ram Sarup* v. *Hardeo*, 50 All. 309.

(*c*) B. of Ex. Act, sec. 29 (1).

(*d*) B. of Ex. Act, sec. 90.

(*e*) *Swan* v. *North British Australasian Co.*, (1863) 32 L. J. Ex. 273, per Byles J. *Goodman* v. *Harvey*, (1836) 4 A. & E. 870; *Raphael* v. *Bank of England*, (1855) 17 C. B. 161; *The London Joint Stock Bank* v. *Simmons*, (1892) A.C. 201, 221.

(*f*) *Venables* v. *Baring Bros. & Co.*, (1892) 3 Ch. 527.

(*g*) *Jones* v. *Gordon*, (1877) L. R. 2 A. C. 616, 629; *H. J. Green* v. *Ba Lon*, 51 I. C. 537; *Ramanadan* v. *Gundu*, (1920) M.W.N. 680, 686.

Sec. 9.

inquiry as to the limit of the broker's authority to deal with the securities, on the principle that a person who places in the power and disposition of another, an instrument which carries a representation of authority to that other person, will convey to that person that such authority exists and as such, will be estopped from disputing the title of one who takes the document in good faith and for value. (*a*) But the Indian law is stricter, and is not satisfied merely with the honesty of the person taking the instrument, but requires that person to exercise due diligence, and thus goes a step further than the English law in scrutinising the causes which go to make up the belief in the mind of the transferee. It would seem that the Indian Legislature adopts the older English law as laid down by Abbot C. J. in *Gill* v. *Cubitt* (*b*) where he says: "It appears to me to be for the interest of commerce, that no person should take a security of this kind from another without using reasonable caution. If he takes such security from a person whom he knows, and whom he can find out, no complaint can be made of him. In that case he has done all any person could do. But if it is to be laid down as the law of the land, that a person may take a security of this kind from a man, of whom he knows nothing, and of whom he makes no inquiry at all, it appears to me that such a decision would be more injurious to commerce than convenient for it, by reason of the encouragement it would afford to the purloining, stealing, and defrauding persons of securities of this sort. The interest of commerce requires that *bona fide* and real holders of bills, known to be such by those with whom they are dealing, should have no difficulties thrown in their way in parting with them. But it is not for the interest of commerce that any individual should be unable to dispose of bills or notes without being subject to inquiry." And with special reference to the facts of the particular case, this is what Bayley, J., laid down as the rule of law to be followed :—

Indian Law.

"It appears to me material for the interests of trade to lay down as a rule that a party cannot in law be considered to act *bona fide* or with due caution and due diligence, if he take a bill of exchange from a person whose features alone he knows without knowing what his name is, where he lives, or whether he is a person with whom he has been in the habit of trade. If we were to say that in this instance, there had been due caution, it should certainly be giving great facility

(*a*) *Fuller* v. *Glyn, Mills, Currie & Co.*, (1914) 2 K. B. 168 ; see also *Lloyds Bank Ltd.*, v. *Swiss Bankverein Union of London*, 107 L. T. 309 on appeal 108 L. T. 143 ; *Fry* v. *Smellie*, (1912) 3 K. B. 282 (pledge of indicia of title by an agent who was entrusted with them together with a transfer of the shares signed in blank) ; *Meyer & Co., Ld.*, v. *Sze Hai Tong Banking Co.*, (1913) A. C. 847.

(*b*) (1824) 3 B. & C. 466, 471.

to the disposal of bills of exchange which have been lost or stolen, by persons who have found or dishonestly obtained them."

The Bombay High Court quoted the later English decisions with approval and applied them to the facts of the case before them (*a*); but the question is not discussed in the light of the words of this section, and the decision is opposed to the opinion expressed by Chalmers in his commentaries on the Indian Act. (*b*) Before the passing of the Act, however, it was held by the Privy Council that the law as laid down by *Gill* v. *Cubitt* (*c*) was no longer law, and that mere negligence does not fix the party taking the instrument with the defective title of the party passing it to him. (*d*) This stricter rule of Indian Law makes it difficult for dishonest transferors to part with negotiable instruments, and honest transferors will not suffer from it, as they have no real difficulty in persuading the transferees to take the instrument as their title is good. (*e*) But the law should be framed not only for the purpose of putting difficulties in the way of dishonest brokers, but also to protect people who honestly take instruments for value; for otherwise, the rapidity with which the commercial business is transacted will be seriously impeded and the very object of negotiable instruments will be defeated. Some of the causes which may excite suspicion in the mind of the taker may be noticed here.

Causes exciting suspicion.

A holder, however honest, taking an instrument not complete or regular on its face, cannot acquire a better title than that of the person from whom he took it, for the bill itself conveys a warning to him and if, in spite of it, he takes it, he does so at his own risk. Thus for example a holder taking a blank acceptance, or a bill wanting in any material particular, (*f*) or a bill torn and the pieces pasted together (the tears showing an intention of cancelling it); (*g*) or a bill with an erasure of the payee's name, (*h*) or of an indorsement (*i*) patent on the face of the bill, cannot acquire a better title than his transferor. A post-dated cheque is not by itself so irregular as to preclude a *bona fide* purchaser of the instrument from being a holder

(*a*) *Raghavji* v. *Narandas* 8 Bom. L. R. 921.

(*b*) Chalmer's N. I. Act (2nd Edn.) 48.

(*c*) (1824) 3 B. & C. 466.

(*d*) *Bank of Bengal* v. *Fagan*, 5 M. I. A. 27, 38.

(*e*) *Cf.* Observations of Kekewich J., in *Simmons* v. *London Joint Stock Bank*, (1891) 1 Ch. 270.

(*f*) *Awde* v. *Dixon*, (1851) 6 Ex. 869; *Hogarth* v. *Latham & Co.*, (1878) 3 Q.B.D. 643; *Jenkins & Sons* v. *Coomber*, (1898) 2 Q. B. 168; *Shaw & Co.* v. *Holland*, (1913) 2 K. B. 15.

(*g*) Cf. *Ingham* v. *Primrose*, (1859) 7 C. B. N. S. 82; *Scholey* v. *Ramsbottom*, (1810) 2 Camp. 485; but see *Baxendale* v. *Bennett*, (1878) 3 Q. B. D. 525; *Smith* v. *Prosser*, (1907) 2 K. B. 735.

(*h*) *Colson* v. *Arnot*, (1874) 54 New York, R. 253, 260; but Stoke's Anglo-Indian Codes (Vol. I) 678.

(*i*) Cf. *Thakur Dass* v. *Futteh Mull*, 7 B. L. R.. 276, 279.

Sec. 9.

in due course. (*a*) A bill is not irregular simply because it had not been unaccepted when the holder took the instrument. (*b*)

Very often inadequacy of consideration will help to decide the *bona fides* of the transaction. (*c*) In general terms, it may be said that if the consideration which the transferor offers to take for the instrument is a sum so totally insignificant compared to its face value as to leave no other reasonable conjecture than that the instrument originated from a corrupt source, or that the transferor was conscious of his own defective title, and if the transferee took it without inquiring, he should not be protected. It is difficult to lay down what disproportion of the price paid to the face value of the paper will be deemed by Courts to raise any suspicion, but it will depend on the circumstances of each case. On the other hand, the fact that the person taking the instrument has paid full value is strong presumptive value of good faith, though it is not conclusive on the question.

A person taking a bill or note from another who is not the payee or an indorsee when it is not payable to bearer, would be put upon notice that there is something wrong with the title of the person from whom he takes it, because it is not in the usual course of business for that person to possess the instrument. A person taking an instrument indorsed in blank by the payee from the acceptor has been held to be a holder in due course. (*d*)

Notice of defects.

No difficulties can arise where notice of defect in the title of the transferor is brought home to the person taking the bill or note. Such notice may be proved by evidence that the transferee received actual notice or that he knew facts informing him that such a defect existed. (*e*) The ordinary rule of law that notice to the agent is notice to the principal or *vice versa* applies to these transactions also; (*f*) but such knowledge of the agent must be acquired in the same transaction or under circumstances so soon thereafter as to be considered to form part of the same transaction, and must also be of a fact material to the transaction, which it would be the duty of the agent to communicate to the principal. This doctrine cannot, of course, apply when the agent is himself a party to the fraud practised on the

---

(*a*) *Royal Bank of Scotland* v. *Tottenham*, (1894) 2 Q. B. 715; *Hitchcock* v. *Edwards*, (1889) 60 L. T. 636.

(*b*) *National Park Bank of New York* v. *Berggern*, (1914) 110 L. T. 907.

(*c*) *Raphael* v. *Bank of England*, (1855) 17 C. B. 161.

(*d*) *Morley* v. *Culverwell*, (1840) 7 M. & W. 174.

(*e*) *Muthia* v. *Somasundra*, 10 M. L. T. 79; *Raphael* v. *Bank of England*, (1855) 17 C. B. 161, 174; *Cf.* Ex parte *Snowball*, (1872) L. R. 7 Ch. App. 534, 549.

(*f*) See *De La Chaumette* v. *Bank of England*, (1829) 9 B. & C 208, as explained in *Currie* v. *Misa*, (1875) L. R. 10 Ex. 153, 164.

principal or when it is to his interest not to disclose the fact to the principal. (*a*) Sec. 9.

Notice affecting the holder in taking a negotiable instrument must exist at the time when he acquires the paper, for then it is that his relation to the bill is fixed, and subsequent notice will not affect his right to sue upon it. If a person becomes the possessor of an instrument for no consideration, and later on gets notice of the defect in the title of his transferor, he cannot improve his position into that of a holder in due course by paying value for it ; nor, in the case of an instrument payable to order, can a person coming into possession for consideration become a holder in due course if he gets notice of the defect of title before he gets an indorsement in his favour. (*b*)

Holder under forged indorsement.

The title of a person who negotiates a negotiable instrument is said to be defective when he obtains the instrument or the acceptance thereof by fraud, duress, force, fear, or other unlawful means, or for an illegal consideration, or when it is negotiated to him in breach of faith, or under such circumstances as amount to fraud, as where the payee is prohibited by an order of court from receiving payment. (*c*) As to defect of title, as a phrase, it is the modern statutory equivalent in this connection of an equity attaching to the bill ; (*d*) and this would cover discharge by payment, accord and satisfaction, and part-payment, but will not include a set-off, (*e*) as it is not an equity attaching to the instrument itself. A person whose title is defective must be distinguished from a person who has no title at all, *e. g.*, where the indorsement in favour of the transferor is forged, for then it is a case of want of title. (*f*)

It is the defect of title of his immediate transferor, (*g*) and not that of any other remote person, the notice of which disqualifies a holder from being a holder in due course. So, if he knew when he took the instrument, of any fraud practised by any party prior to his transferor, he would not be affected by it, unless he himself was a party to such fraud ; for the law will not allow a person to take advantage of his own fraud. Besides the above class of persons, there

(*a*) *Texas Company* v. *Bombay Banking Co.*, 44 Bom. 139 (P. C.).

(*b*) *Whistler* v. *Forster*, (1863) 14 C. B. N. S. 248.

(*c*) *Subramania* v. *Chokkalinga*, 44 M. L. J. 206; *Namagiri* v. *Muthu Velappa*, 56 M. L. J. 70, 73. B. of Ex. Act, sec. 29 (2). See secs. 58 and 59, *post*.

(*d*) Halsbury's Laws of England, Vol. II, p. 658, 659.

(*e*) *Van Ingen* v. *Dhunna Lall*, 5 Mad. 108.

(*f*) *Hunsraj Purmanand* v. *Rutlonji Walji*, 24 Bom. 65 ; *Jai Narain* v. *Mahbub Bakhsh*, 28 All. 428 ; *Govinda* v. *Mayo Das*, 28 P. L. R. 1884.

(*g*) *Kurundaliammal* v. *Kunhikanam* (1930) Mad. 141.

Sec. 10.

are two other classes of persons, who, though not coming strictly within the definition in the section, are still placed as regards their rights, in the same position as a holder in due course. Firstly, a holder without value who derives his title through a holder in due course, and secondly, a holder who derives his title after maturity through a holder in due course. (*a*)

A holder in due course has to be distinguished from a mere holder for value, that is, a person who holds a bill, for which value has at sometime been given, though not by the holder himself. (*b*) Thus, if in order to pay off a debt due, the debtor induces a third person to draw a bill on himself which he accepts in favour of the creditor, the latter becomes a holder for value and can sue the drawer though he has not received any value. (*c*) Though originally no consideration passes between the parties at the time of drawing the bill, if at any time subsequently, consideration is paid, then the holder of the instrument becomes a holder for value. (*d*)

"Payment in due course."

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

NOTES.

Payment in due course is one made in accordance with the apparent tenor of the instrument, that is, according to what appears on the face of the instrument to be the intention of the parties. A payment cannot be a payment in due course if it is made to a person not entitled to receive it; or if it is made before the due date; again, a payment may become invalid as a payment in due course, if it is made with a knowledge of the facts which justly impair or destroy the rights of the holder to receive the money, or under circumstances

(*a*) See notes to secs. 58 and 59, *post*.

(*b*) B. of Ex. Act, sec. 27 (2); *Lomas* v. *Bradshaw*, (1850) 19 L. J. C. P. 273.

(*c*) *Scott* v. *Lifford*, (1808) 1 Camp. 246; *Munroe* v. *Bordier*, (1849) 8 C. B. 862.

(*d*) *Burdon* v. *Benton*, (1847) 9 Q. B. 843; *Barber* v. *Richards*, (1851) 6 Exch. 63; *Poirier* v. *Morris*, (1853) 2 E & B. 89.

affording reasonable grounds for believing that the holder is not entitled to receive payment. Lastly, the payment must be made by a person who has the right, authority and capacity to make it.

According to this section, payment would seem to be payment of money only, for the section in the last portion speaks of '*amount*' therein mentioned. (*a*) The party bound to pay has no right to do so in any medium other than that expressed in the instrument itself, which must be money only. Money means cash, or anything recognised as legal tender, such as, currency notes. An agent authorised to receive payment generally cannot take payment in goods, (*b*) nor can he take a cheque in lieu of payment, (*c*) but if once a cheque is tendered and received, and the creditor or his agent objects only to the amount, he cannot afterwards object to the nature of the tender. (*d*) The holder is always entitled to refuse to take anything but money in payment of the bill ; however, by agreement between the parties all other modes of payment may be accepted, *e.g.*, payment by drafts or cheques or in goods or by set-off.

After maturity.

A payment before maturity is not payment according to the tenor of the instrument, and so, although the payment may discharge the immediate parties to the transaction, yet as to third persons its effect is otherwise, for a payment in due course means payment at maturity, and not by anticipation. Thus, if after such premature payment, the instrument is indorsed over, it is valid in the hands of a *bona-fide* indorsee. (*e*) Even the maker of a note or the acceptor of a bill becoming the holder of the instrument by transfer may re-issue the bill before maturity, so as to bind himself and other subsequent parties. (*f*)

By whom.

Any party to a bill may pay it, and such party acquires the right of the holder from whom he took the instrument against all parties prior to him ; but no stranger has a right to pay the bill or note payable by another, so as to acquire the rights of a holder, except *supra protest*, and for honour of some party to the bill or note. A payment by a stranger has been held to be a valid satisfaction of the bill if it be made on account of the acceptor, and the

(*a*) Cf. *Morley* v. *Culverwell*, (1840) 7 M. & W. 174, 180.

(*b*) *Howard* v. *Chapman*, (1831) 4 C. & P. 508.

(*c*) *Bank of Scotland* v. *Dominion Bank* (*Toronto*), (1891) A. C. 592 (where the acceptance of payment by agent subject to condition, was held not binding on holder).

(*d*) *Bolye Chand* v. *Moulard*, 4 Cal. 572 ; *Blumberg* v. *Life Interests Corporation*, (1897) 1 Ch. 171 affirmed in (1898) 1 Ch. 27 ; *Debendra Nath* v. *Abdul Samed*, 10 C. L. J. 150.

(*e*) *Burbridge* v. *Manners*, (1812) 3 Camp. 193.

(*f*) *Morley* v. *Culverwell*, (1840) 7 M. & W. 174 ; *Attenborough* v. *Mackenzie*, (1856) 25 L. J. Ex. 244. See sec. 90, *post*.

Sec. 10.

acceptor either presently agrees to it, or subsequently adopts it; (*a*) but under the Indian law it will be a valid satisfaction even if the acceptor does not ratify. (*b*)

To whom.

Payment of the amount should always be made to the person who is capable of giving a good discharge; such person is generally the last holder of the bill or any person authorised by him to receive payment, such as, a factor or agent; and the payment should not be made save to a party in possession of the bill. It can be made only to a legal owner thereof, and payment to any other party is no discharge to the acceptor; but if such holder treats the bill as discharge for a long time of nearly three years by such payment, the acceptor cannot be made to pay over again. (*c*) Before the drawee or acceptor of a bill, or the maker of a note pays it, he should be well satisfied that the person who presents the bill or note for payment is entitled to receive it. If the bill be payable to bearer or indorsed in blank, the person having it in possession may be presumed to be the person entitled to receive payment, unless the payer has notice to the contrary. If the instrument be payable to a particular party or order and is un-indorsed by him, payment to any person in actual possession of the instrument will not be a payment in due course, for the absence of an indorsement in favour of the person demanding payment is a reasonable ground for believing that he is not entitled to receive the amount. But if he held or exhibited extraneous evidence that he is the agent of the holder, or that he is otherwise entitled to receive payment, payment under the circumstances may be good. Payment may be safely made to one who is a special indorsee, although there may be subsequent uncancelled indorsements of himself and others on the paper. (*d*) Payment may be made to the assignee of a bankrupt, or the representative of a deceased holder, or the guardian of a minor or an insane person, and also to a member of a firm, when the firm is the holder. In the case of a negotiable instrument where members of a joint Hindu family are the holders, payment may be made to the managing member of the family. (*e*)

Good faith.

The payer must act in good faith and without negligence. If he suspects that the bill is held wrongfully, or if having the means of knowledge at his hands to test the right of the person claiming such payment, he neglects to make use of them, then his payment of the

---

(*a*) *Belshaw* v *Bush*, (1851) 11 C. B. 191; *Cook* v. *Lister*, (1863) 32 L. J. C. P. 121.

(*b*) See notes to sec. 78, *post*.

(*c*) *Field* v. *Carr*, (1828) 5 Bing. 13; *London & River Plate Bank* v. *Bank of Liverpool*, (1896) 1 Q. B. 7.

(*d*) Daniel, sec. 1230 (a). *Subramanian* v. *Alagappa*, 30 Mad. 441; see *Ghulam* v. *Ram Ditta*, (1930) Lah. 248.

(*e*) Cf. *Veliet Doss* v. *Bunarussee Roy*, (1864) W. R. 262.

bill will not be a payment in due course. In this respect the Indian Act differs from the English Law, under which all that is required is that the payer should not have any notice of the defect of title of the person presenting the instrument, and should have acted honestly whether negligently or not. (*a*) The drawee of a bill, or the maker of a note paying the bill or note to a bankrupt with the knowledge of the bankruptcy, or paying it after receiving intimation from the drawer not to pay, will not be a payment in due course. (*b*) Further, before paying a bill or note, the payer should make sure that the person presenting for payment is the real person entitled to it; and it has been held that the drawee of a hundi paying negligently without inquiring whether the person presenting is the real payee or not, is liable to pay again to the real holder for value. (*c*)

Sec. 12.

Inland instrument.

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India, shall be deemed to be an inland instrument.

Foreign instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

NOTES.

Inland instrument.

An inland instrument is an instrument which purports to be (1) both drawn and payable in British India, (2) drawn in British India on some person resident therein, though the place of payment may be in a foreign country. (*d*) This is in accordance with the definition given in the English Bills of Exchange Act, section 4, and it seems to be an essential requisite that the instrument must be drawn in British India. But, in *Kidston & Co.* v. *Seth Brothers*, (*e*) Buckland, J. has, on a construction of the section, come to the conclusion that a bill drawn upon a resident in British India, is an inland one, irrespective of the place where it was drawn. It is submitted that this is a wrong reading of the section, involving a departure from English law. The learned Judge bases his decision on the fact that the

(*a*) B of Ex. Act, secs. 59 and 90.
(*b*) *Lalla Mal* v. *Kesho Das*, 26 All. 493.
(*c*) *Sahu Lalta Persaud* v. *Charles Campbell*, 9 C. W. N. 841.
(*d*) B. of Ex. Act, sec. 4; *Amner* v. *Clark*, (1835) 2 Cr. M. & R. 468.
(*e*) 57 Cal. 730.

Sec. 12. framers of the Indian Act must have had in view section 4 of the English Act, forgetting that the Indian Act is earlier than the English Act, and the Indian Act also was drafted by Mr. Chalmers. The nature of an inland instrument is not changed by the fact of its being in circulation in a foreign country. Thus a bill drawn and payable in British India is not the less an inland bill, because it has been indorsed in Egypt. The important difference between foreign and inland bills is that the former must be protested for dishonour when so required by the law of the place where they are drawn, while the latter need not be. (*a*) The liabilities of the drawer of a bill of exchange, and of the maker of a promissory note are to be regulated in all the essential matters by the law of the place where the instrument is drawn or made. (*b*) In the case of foreign instruments, the mere fact that it is negotiable in the country of issue will not make it negotiable in another country unless it is negotiable by the usage of that country. (*c*) The form of the instrument also will be determined by the law of the country where the bill or note is drawn or made, for every person taking a foreign instrument is deemed to be cognisant of those requisites on which its validity depends. If any of these requisites be omitted, the instrument will be void, or will at least lose many of the advantages incident to a perfect instrument. But small variations from the prescribed form, if not substantially contrary to law, will not vitiate the instrument. If a bill on its face be an inland bill, the fact that it was actually drawn and delivered in a foreign country will not divest it of its inland character. If no place is mentioned in the bill, the address of the drawee will be deemed to be the place of payment. Unless there appears on the face of the instrument anything to show the contrary, a holder may treat a bill as an inland bill. (*d*)

Foreign bills are generally drawn in sets, each of the sets or parts being numbered and containing a reference to the other parts. The object is to obviate danger of loss, especially when they are to be sent to foreign countries overseas.

'Resident.' Difficulties may arise in determining the question as to who are the persons 'resident' in British India. 'Resident' means a person who has got residence; and "residence is an ambiguous word and has a variety of meanings, according to the Statute in which it is used." (*e*) It is often used as synonymous with the word 'home'. The word suggests permanency of abiding at the place (though not of the charac-

(*a*) Sec. 104, *post*.
(*b*) Sec. 134, *post*.
(*c*) *Picker* v. *London & County Banking Co.*, 18 Q. B. D. 515.
(*d*) *Cf.* B. of Ex. Act, sec. 4 (2).
(*e*) Stroud's Jud. Dictionary. 1737.

ter required to establish a domicile) as opposed to a temporary stay, or a mere temporary locality of existence. (*a*) The word has been defined for the purpose of fixing the jurisdiction of Courts by the Civil Procedure Code; (*b*) but it is submitted that the definition is too wide for application under this section. 'Residence' as applied to companies and partnerships means the place where their business is usually carried on.

"Negotiable instrument".

13. (1) A 'negotiable instrument' means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation (*i*).—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (*ii*).—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Explanation (*iii*).—Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.*

(*a*) But see *Srinivasa* v. *Venkata Varada*, 29 Mad. 239, 267.

(*b*) Civ. Pro. Code, sec. 20.

* This sub-section was added by sec. 2 of Act V of 1914.

Sec. 13.

NOTES.

Sub-section (1) of the section was substituted by section 3 of Act VIII of 1919 for the older clause which ran as follows :—

"A negotiable instrument means a promissory note, bill of exchange or cheque expressed to be payable to a specified person, or his order or to the order of a specified person, or to the bearer thereof or to a specified person or the bearer thereof."

It is not essential to the validity of a bill of exchange or note that it should be negotiable, and the Act expressly recognises non-negotiable bills and promissory notes. (*a*) Before the Act VIII of 1919, it was necessary to make the instrument negotiable, to insert operative words of negotiability, such as "order" or "bearer" or any other term expressing the intention on the part of the drawer or maker to render it negotiable ; and, an instrument drawn payable to a specified person was said to be not negotiable. (*b*) In this respect it followed the English law as it existed before it was amended by the Bills of Exchange Act. Despite the provisions of the Act by the custom of trade in Bombay, a cheque with the word 'bearer', struck out without the word 'order' was regarded as an 'order' cheque and was treated as negotiable. But the Bombay High Court refused in *Dossabhai* v. *Virchand* (*c*) to recognise the custom, as it would be in defiance and disregard of the provisions of the Act. This decision caused a good deal of hardship and surprise to the mercantile community and by the above Amending Act VIII of 1919 the provisions of the Indian Act were brought into line with the English Bills of Exchange Act. (*d*) Now, a bill payable to a particular person and containing no words prohibiting transfer or indicating an intention that it should not be transferable is a bill payable to order. (*e*) If a bill originally negotiable be indorsed simply "Pay A.B.", its negotiability is not thereby restricted, and A.B. can indorse it away. (*f*) When once words of negotiability, such as, 'order' or 'bearer' have been used in an instrument, it was doubted by Lindley, L. J., whether such an instrument can be made not transferable ; at any rate, very strong words will be necessary to prohibit transfer. (*g*) But this does

(*a*) Secs. 4 & 5, *ante* ; *Cf.* sec. 98 (f) *post* ; *Smith* v. *Kendall*, (1794) 6 T. R. 123 ; *Rex* v. *Box*, (1815) 6 Taunt, 325 ; *Sunder* v. *Mahadeo*, 23 A. L. J. 253.

(*b*) *Jethaparkha* v. *Ramchandra*, 16 Bom. 689 ; *Udayar* v. *Muthia*, 7 M. L. J. 231 ; *Sugappa* v. *Govindappa*, 12 M. L. J. 351 ; *Rama* v. *Venkatachellam*, 30 Mad. 75 ; *Tirath Ram* v. *Sardar Autar*, 22 I. C. 861.

(*c*) 21 Bom. L. R. 1.

(*d*) *Dossabhai* v. *Virchand*, 21 Bom. L.R. 1 ; B. of Ex. Act, sec. 8 (4).

(*e*) *Bankidas* v. *Tana Bai*, (1929) Nag. 274 ; *Gulabgir* v. *Nathmal*, 27 N. L. R. 327 ; *Hans Raj* v. *Lachmi*, (1923) Lah. 388.

(*f*) Sec. 50, *post* ; B. of Ex. Act. sec. 35 ; *Thakursey* v. *Kishendas*, 76 I. C. 282 ; *Hans Raj* v. *Lachmi*, (1923) Lah. 388.

(*g*) *National Bank* v. *Silke*, (1891) I Q. B. 435. See *Meyer & Co.* v. *Jules Decroix*, (1891) A. C. 520 ; *Thakursey* v. *Kishendas*, 76 I. C. 282.

not mean that if a negotiable instrument is originally made payable to bearer, no subsequent indorsement can change its character. Thus, where a hundi is drawn payable to A or bearer and is indorsed by the payee to a named person, it ceases to be a bearer hundi and is payable only to the named person. (*a*) A bill negotiable in its origin continues to be negotiable until the person indorsing the same restricts or excludes the right of further negotiation, or until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity. (*b*)

The second clause of the section was added by Act V of 1914 as doubts had been thrown on the legal validity of indorsements making the instruments payable to two or more persons jointly or in the alternative to one or several of such payees. The law has been brought to approximate to the English law on the point. (*c*) A note executed in favour of alternative payees prior to the passing of the Amending Act V of 1914 was held invalid, (*d*) but a note in favour of joint payees was recognised even before the Amending Act. (*e*) It is not clear why the clause is confined to a negotiable instrument when the corresponding provision in the English Statute is applicable to notes, bills, and cheques in general. However, a Dhanjoge hundi has been held to be an instrument coming under this section and the holder is, therefore, entitled to the benefit of section 22. (*f*)

The Act enumerates only three kinds of nègotiable instruments; promissory notes, bills of exchange and cheques, and the scope of the Act is limited to defining and amending the law relating to them alone as will appear from the preamble. But by usage, other instruments may be impressed with the character of negotiability, and the law relating to them will have to be decided independently of the Act; and the non-mention of such instruments in the present section cannot be taken against their negotiability when deciding questions relating to them. If an instrument satisfies two conditions, that is, (1) that it is in a form which renders it capable of being sued by the holder *pro tempore* in his own name, and (2) that it is transferable like cash by delivery; then courts will recognise it as a negotiable instrument. In all cases, it is the province of the court and not that of the jury to decide on the negotiability of an instrument, except in cases where the Law Merchant is doubtful, when evidence of custom may be received. (*g*)

Sometimes instruments have been treated as negotiable instruments not because of any recognised usage of custom relating to them

(*a*) *Forbes, Forbes Campbell & Co.* v. *Official Assignee*, 27 Bom. L. R. 34; See sec. 50, *post*.

(*b*) Sec. 60, *post*.

(*c*) B. of Ex. Act, sec. 7, cl. 2.

(*d*) *Appa* v. *Ramunni*, 18 L.W. 183.

(*e*) See sec. 51, post; *Muhammad Kumarali* v. *Ranga*, 24 Mad. 654.

(*f*) *Bibi Kazmi* v. *Lachman Lal*, (1930) Pat. 239.

(*g*) See notes to sec. 1. *ante*; 1 Smith's Leading Cases. (13th Edn,) 533.

Sec. 13.

but on the ground that the persons issuing such instruments are estopped from disputing their negotiable character against a transferee for value. (*a*) Where there is a distinct promise held out by a person informing all the world that he will pay to a certain person or his order, it is not competent to him to set up equities of his own and say that because the person who makes the order is indebted to him, he will not pay. (*b*)

Chose in action.

A negotiable instrument is a chose in action and may be transferred by assignment or sale, subject to the same conditions as would be requisite in the case of an assignment of an ordinary chose in action. (*c*) In places to which the Transfer of Property Act applies, the transfer can be effected only by an instrument signed by the transferor (*d*) though decisions are available to support the view that there can be a valid oral assignment of a negotiable note; (*e*) but the decisions are not, it is submitted, correct; at any rate, to secure his position against subsequent claimants, the assignee should get an assignment in his favour and also give notice of the assignment to the debtors. (*f*) Thus, where a firm is dissolved, and is reconstituted anew, the title to a note in favour of the old firm does not pass to the new firm without indorsement or assignment. (*g*) The transferee is subject to all the liabilities and equities to which the transferor was subject in respect thereof at the time of transfer. (*h*) The ownership in a negotiable instrument may also be transferred by an order of court without indorsement. (*i*) It is immaterial in that case whether the instrument is negotiable or not. (*j*) Without such an order and no proper assignment an indorsee of a non-negotiable note claiming under a mere indorsement cannot maintain a suit upon it. (*k*) According to the Hindu Law and the custom of Native Merchants, a

---

(*a*) See *General Estates Co.*, In re (1868) L. R. 3 Ch. App. 758; *Rumball* v. *Metropolitan Bank*, (1877) 2 Q. B. D. 194; 1 Smith's Leading Cases (13th Edn.) 543.

(*b*) *Agra & Masterman's Bank*, In re (1867) L. R. 2 Ch. App. 391; *Imperial Land Co. of Marseilles*, Ex parte *Colborne*, L. R. (1870) 11 Eq. 478. See *Williams* v. *Colonial Bank*, (1888) 38 Ch. D. 388, 409.

(*c*) Transfer of Property Act, sec. 130; *Muthar Sahib* v. *Kadir Sahib*, 28 Mad. 544; *Subba Narayana* v. *Ramasami*, 30 Mad. 88 (F. B.); *Arunachala* v. *Subba*, 17 M. L. J. 393; *Raman* v. *Nagaratnam*, 15 I. C. 380; *Perumal* v. *Perumal*, 44 Mad. 196; *Palavan* v. *Kanu*, 66 I. C. 501; *Gulabgir* v. *Nathmal*, 27 N. L. R. 327.

(*d*) *Ibid*; *T. A. R. A. R. M. Chetty* v. *Solomon*, 55 I. C. 718.

(*e*) *Venkatadri* v. *Lakshminarasimha*, 21 M. L. J. 80; *Panna Lal* v. *Hargopal*, 51 I. C. 250.

(*f*) Transfer of Property Act, sec. 130; *Akhoy Kumar* v. *Hari Das*, 18 C. W. N. 494; *Babu Govidut* v. *Ibraham*, 14 Bur. L. R. 25 at 29, 30.

(*g*) *Maung Aung Min* v. *Muthu Crupen*, 1 Bur. L. T. 50.

(*h*) *Ibid. Panna Lal* v. *Hargopal*, 51 I. C. 250. See sec. 132 T. P. Act.

(*i*) *Kuthalingam* v. *Packiam*, 8 M. L. T. 448; Civ. Pro. Code, O. 21, R. 80.

(*j*) *Rama Iyen* v. *Venkatachellam*, 30 Mad. 75; *Sugappa* v. *Govindappa*, 12 M. L. J. 351.

(*k*) *Parfitt* v. *Chainsekh*, 144 P. R. 1906.

hundi accepted by the drawee is assignable without any regular form of indorsement, (*a*) but for negotiation a written indorsement was necessary. (*b*) Government promissory notes would come within the definition of negotiable instruments, (*c*) and this Act would apply to them, except as to the incidents which are specially provided for in the Securities Act XIII of 1886, now Act X of 1920. They are not transferable as an ordinary chose in action, for that Act provides that no transfer can take place except by an indorsement, and that too on the back of the Government security itself. (*d*) If the back of a Government promissory note is completely covered with indorsements the holder must get it renewed. (*e*)

Sec. 14.

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Negotiation.

NOTES.

Negotiation.

A bill or note payable to order, when merely delivered over to the transferee without indorsement cannot be said to be negotiated under this section, as the transferee by receiving it, is not constituted a holder, because he is not entitled in his own name to the possession of the instrument, or to recover the amount due under it. Neither can the transferee be looked on as an assignee of a chose in action as there is no writing embodying the transaction. (*f*) Handing over a negotiable instrument to an agent for safe custody is not negotiation under this section. There must be a transfer, and the transfer should be one by which the transferee is constituted a holder under section 8. To constitute the transferee a holder, it is necessary that the rules as laid down in the Act by which transfer can be effected must be followed. A promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof; but if payable to order, negotiation can be effected only by indorsement and delivery thereof. (*g*) A direction to pay S or order as per accounts attached herewith, without recourse on a note, is a negotiation of the instrument and not an

(*a*) *Rajroopram* v. *Buddea*, (1883) 1 *Hyde*. 155.

(*b*) *East Indian Bank* v. *Khojah Vullie*, (1866) Ind. Jur. (N. S) 247.

(*c*) *Hunsrai* v. *Ruttonji*, 24 Bom. 65, 71; Cf. *The Bank of Bengal* v. *Macleod*, 5 M. I. A. 1; *Hira Lal* v. *Raj Kumar*, 12 C. L. J. 470.

(*d*) *Merbai* v. *Peroz Bai*, 5 Bom. 268; The Securities Act X of 1920, sec. 5.

(*e*) *Monmohini* v. *The Secy. of State for India*, 22 W. R. 106

(*f*) T. P. Act, sec 130.

(*g*) Secs. 46, 47 and 48, *post*.

Sec. 15.

assignment of the debt. (*a*) It is not clear, whether the delivery of a promissory note, or the bill, or a cheque to the payee thereof does amount to negotiation under this section. In ordinary language it cannot be said that there was a transfer effected by such transaction, and in England too the point has not been settled definitely. (*b*) But in a case relating to a negotiable instrument drawn in India to which the Indian Act applied, it was held, that though the word 'issue' is not defined in the Indian Act as in the English Act, still the definition of 'negotiation' in this section makes the payee a holder by negotiation and it was, therefore, held that a cheque delivered to a payee was issued and that the payee is a holder. (*c*)

Effect on collateral securities.

As to the legal effect of transfer or negotiation, on collateral securities deposited, the opinion is divided. Where certain promissory notes along with other properties were transferred by way of gift by an un-registered document, it was held that the gift fell under chapter VIII of the Transfer of Property Act (transfer of actionable claims) and was valid. It took effect so as to pass the securities deposited for the debts, to the donee. (*d*) This was followed in *Cunniah* v. *Gopala Chettiar* (*e*) where a promissory note was indorsed for collection and it was held the securities were transferred with the debt. Reference was also made to *Nataraja* v. *South Indian Bank* (*f*) which laid down that a hypothecation debt was movable property under the Civil Procedure Code and on sale of the debt by the court, the hypothecation passes along with it. These decisions were considered in a later case, (*g*) and it was held therein that the indorsee for value of a negotiable instrument, the amount of which had been secured by a mortgage by deposit of title deeds, cannot claim to enforce the mortgage in the absence of a registered conveyance of the same.

Indorsement.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instru-

(*a*) *Ram Jas* v. *Shahabuddin*, (1927) Lah. 89.

(*b*) *Herdman* v. *Wheeler*, (1902) 1 K. B. 361; *Lloyds Bank* v. *Cooke*, (1907) 1 K. B. 794.

(*c*) *Lloyd's Bank Ltd.* v. *Chartered Bank etc.*, (1929) 1 K. B. 40, 57.

(*d*) *Perumal* v. *Perumal*, 44 Mad 196.

(*e*) 26 M. L. T. 242.

(*f*) 37 Mad. 51.

(*g*) *Elumalai* v. *Balakrishna*, 44 Mad. 965. See also *Imperial Bank of India* v. *Bengal National Bank*, 59 Cal. 377 (P. C.).

ment, he is said to indorse the same, and is called the "indorser." Sec. 15.

NOTES.

Nature of indorsement.

The word "indorsement," in its literal sense, imports a writing on the back of an instrument, but in its technical sense, it is applicable to negotiable papers, and means the writing of one's name on the back thereof, with the intent of transferring the same thereby. As to the form of an indorsement, it is not indispensable that any particular form of words should be used. (*a*) It is generally sufficient if there be the signature of the party indorsing without any additional words, or the mark of one unable to write. (*b*) But the mere circumstance of the payee putting a number or any private mark on the bill or note will not be equal to an indorsement. (*c*) Any words may be placed over the signature or mark, if they import a present intention to transfer the same thereby. When upon the back of a promissory note it was written thus: "This. . . is made over to. . . .", and it was signed by the transferor, it was held that the writing amounted to an indorsement. (*d*) Again, where a promissory note bore on it the words "I have received this day from you the sum of Rs. . . . due for principal and interest and assigned this note to you with power to recover the amount due under it by showing the same", it was held that it was a valid indorsement. (*e*) But the words "I bequeath. . . pay to, or order the within contents at my death" were held not to amount to an indorsement. (*f*) Nor is mere acknowledgment of payment an indorsement, as it does not contain a direction to pay to a specified person or order. (*g*) The signature ought to be written in ink in order to prevent its defacement, but this is not indispensable, and a pencil indorsement has been held to be sufficient. (*h*) The signature to operate as a negotiation must be written on the instrument itself, for an assignment in writing not on the instrument itself is not an indorsement. But it may sometimes happen that by rapid circulation, the back of the paper is completely covered by indorsements, and then the holder may tack or paste on a piece of paper, and the indorsements may be made thereon; it then becomes part of the bill. Such addition is called an *allonge*, which is

'Allonge'.

(*a*) *Sivaramakrishna* v. *Moideen*, 33 Mad. 34.
(*b*) Gen. Clauses Act, sec. 3 (52).
(*c*) Ex parte *Shuttleworth*, (1797) 3 Ves. 368.
(*d*) *Srinivasa* v. *Venkatammal*, 24 M. L. J. 296.
(*e*) *Sivarama* v. *Moideen*, 33 Mad. 34.
(*f*) Re *Patterson*, (1864) 33 L. J. Ch. 596.
(*g*) *Chandu* v. *Ramunni*, 39 M. L. J. 273.
(*h*) *Geary* v. *Physic*, (1826) 5 B. & C. 234.

Sec. 15. thus described by Couch, C.J. "An *allonge* is a slip of paper annexed to a bill upon which there being no legal limit to the number of indorsements, when there is not room to write them all distinctly on the back of the bill, the supernumerary indorsements may be written. It is annexed by the holder in order that he may write the indorsement." (*a*)

The word indorsement imports in its strict sense a writing on the back of the instrument; but it is well settled in English law, and it is the same under the section, that "it is quite immaterial whether the indorsement be on the back of the instrument or on its face." (*b*) But an exception is provided in the case of Government securities of this country where no indorsement is valid, unless the holder inscribes his signature on the back of the security itself. (*c*) The section makes no provision as to the date of indorsement, and as to the presumption relating to transfers and indorsements, see section 118 (d) and (e). It is not necessary for the validity of an indorsement that it should state that value passed between the parties; but it will be presumed that such indorsement was for consideration. (*d*) It has been held that an indorsement made by a person who has been prohibited by an order of court from so indorsing is not valid, and the indorsee (who in that case was found to have known of the prohibition) was not a holder and much less a holder in due course. (*e*)

Delivery. An indorsement requires the delivery of the instrument by the indorser himself, or by somebody on his behalf with the intention of passing property therein. (*f*) Till such delivery, the contract of the indorser on the bill or note is incomplete and may be revoked. (*g*) Delivery implies acceptance by the indorsee; if the indorsee sends it back as worthless, the indorsement is declined, and becomes invalid though capable of becoming valid by ratification or confirmation. The mere fact that one person writes his name on the back of the instrument, and hands it to another does not necessarily constitute the former an indorser; for such acts of writing and delivery may be qualified by the intention with which or the circumstances under which, these acts took place. (*h*) For example, it may be left with the other person for safe custody, or it may be delivered to the indorsee

(*a*) *Monmohinee* v. *Secy. of State for India*, 22 W. R. 106.

(*b*) *Young* v. *Glover*, (1857) 3 Jur. (N. S.) 637, per Lord Campbell, C. J.; Ex parte *Yates*, (1857) 2 De. G. & J. 191; *Ramlal*, v. *Haran*, 3 B. L. R. (O. C. J.) 130.

(*c*) Ind. Securities Act (XIII of 1886), sec. 5.

(*d*) Sec. 118 (a), *post*.

(*e*) *Subramania* v. *Chockalinga*, 46 Mad. 415; *Namagiri* v. *Muthu Velappa*, 56 M. L. J. 70 at 73.

(*f*) *Denton* v. *Peters*, (1870) L. R. 5 Q. B. 475; sec. 46, *post*.

(*g*) *Brind* v. *Hampshire*, (1836) 1. M. & W. 365, 373; see notes to sec. 46, *post*.

(*h*) *Denton* v. *Peters*, (1870) L. R. 5 Q. B. 475.

on a condition precedent not performed, in which case it is said to be an *escrow*, and the person acquires no title to the instrument. The intention to pass the property in the bill or note is essential to make the delivery effectual, for, in the words of Maule, J.—

Sec. 15.

'Escrow.'

"The liability of an indorser to his immediate indorsee arises out of the contract between them; and this contract in no case consists exclusively in the writing popularly called an indorsement which is indeed necessary for the contract in question; but that contract arises out of the written indorsement itself, the delivery of the bill to the indorsee, and the intention with which the delivery was made and accepted as evinced by words spoken or written by the parties, and the circumstances (such as the usage of the place, the course of dealing between the parties, and their respective situations) under which the delivery took place." (*a*) Under the section the person signing should do so for the purpose of negotiation, which under the previous section involves a transfer of the instrument with the intention to constitute the transferee a holder thereof.

Who can indorse.

Under this section, indorsement cannot be made by a stranger to the instrument. It can be made only by the holder or maker signing otherwise than as such maker. Under section 8, the payee of an instrument is the holder, and so can indorse. (*b*) Suppose the bill or note is drawn to the maker's order, then in order to negotiate it, the maker should indorse the instrument. He does not indorse it in the capacity of the maker, but in a different capacity. He cannot be said to be a holder under the Act. Therefore, the words "the maker of a negotiable instrument signs the same otherwise than as such maker' are used to cover such a case. His signing for the purpose of negotiation amounts to an indorsement.

The section mentions only the maker and the holder as persons capable of indorsing, but does not provide for cases of instruments drawn to drawer's order. (*c*) Nor does it provide for a case where in course of suits or proceedings in Court, negotiable instruments have to be transferred. That is specially provided for in the Civil Procedure Code. (*d*) Whether the indorsement of a negotiable instrument as provided under O. 21, R. 80 of the code is in all respects as effective as an indorsement by a party, has not been decided. But from the words of the rule it seems to be clear that such an indorsement not

(*a*) *Castrique* v. *Buttigieg*, (1856) 10 Moo. P. C. 94, 108.

(*b*) *Muhammad Khumarali* v. *Ranga*, 24 Mad. 654 (two payees indorsing to one of themselves).

(*c*) See notes to sec. 51, *post*. Cf. *Walters* v. *Neary*, (1904) 21 T. L. R. 146.

(*d*) Civ. Pro. Code, O. 21, R. 80; see *Kuthalalingam* v. *Packiyam*, 8 M. L. T 448.

Sec. 15. only transfers the ownership in the instrument, but also constitutes the transferee a holder. (*a*)

Indorsement by a stranger.

If a stranger signs a negotiable instrument for the purpose of negotiation, he does not thereby become an indorser under the Act. Thus, where the payee of a pro-note died leaving a widow and a minor son, and the widow indorsed the note without purporting to act as guardian of her minor son, it was held, that the indorsement was invalid, and the indorsee could not sue on the note. (*b*) The Act is silent as to what his liability is; possibly he may be held liable as a guarantor. (*c*) But under English law, he is subject to all the consequences which follow in the case of a holder indorsing the same. (*d*) *Prima facie* the person signing becomes liable to subsequent parties and not to those who had become parties to the bill before his signature was affixed. (*e*) This too can be reversed or transposed by special agreement, that is to say, the "backer" of the instrument may be liable to the prior parties if that is the intention of the parties to the transaction. (*f*) This liability of a 'backer' has been extended to cases where the backer signs the bill even before it is complete. Normally he would not be liable as the bill is in blank, and persons taking the instrument take it with notice of imperfection, but the presumption of authority under section 20 of the Negotiable Instruments Act may be relied on and the holder will have the necessary authority to fill up and thus make himself a holder in due course. (*g*) The latest case "*National Sales Corporation* v. *Bernardi* (*h*) introduces a further extension. The holder there, when completing the bill was in a hurry and so wrote his name in the wrong place, that is, below the signature of the backer instead of above it. The order of signature was held to be immaterial and was not allowed to affect the carrying out of the intention of the parties. In the Continent there is the system of "Aval" by which payment of a bill can be guaranteed by the signature of a third party on the bill itself who thus assumes the same liability as the party for whose honour he intervenes. "It is to be hoped that we have had seen the end of a series of cases all of which owe their origin to the setting up of immeritorious defences and have brought great confusion in the law of negotiable instruments."

'Aval.'

(*a*) Cf. *Watkins* v. *Maule*, (1820) 2 Jac. & W. 237, 243.

(*b*) *Suppai* v. *Kandasamy*, 19 L. W. 560; *Kothanda* v. *Ramiah*, 45 I. C. 186.

(*c*) *Thakursey* v. *Kishendas*, (1925) Sindh 9; *Brajendra* v. *The Hindustan Co-op. Ins. Society*, 44 Cal. 978.

(*d*) See B. of Ex. Act, sec. 56; Cf. *Mead* v. *Young*, (1790) 4 T. R. 28; *Soares* v. *Glyn.*, (1845) 8 Q. B. 24.

(*e*) *Steele* v. *M'Kinlay*, 5 A. C. 754.

(*f*) *McDonald & Co.* v. *Nash & Co.* (1924) A. C. 625.

(*g*) *Ibid.*

(*h*) (1931) 2 K. B. 188; *Mc. Call Bros.* v. *Haegreaves*, (1932) 2 K. B. 423.

Sec. 16.

Blank instrument.

Though an indorsement supposes a pre-existing bill, yet a transfer may be made previously to the bill being completed. If a man indorses his name on a blank stamped paper, and delivers it over to another, such an indorsement will be a good one, and the indorser will be held to authorise the person to fill up the instrument within a reasonable time (see section 20). There are two kinds of indorsements; in blank and in special (see section 16). They may be conditional or restrictive (see section 52).

Sometimes a person may be held liable as an indorser without actually signing the bill, as where it was proved to be the common and invariable practice in London not to indorse each bill discounted for a customer but only to give a general guarantee for all bills, this practice was recognised and given effect to.(*a*)

Effect of indorsement.

The effect of an indorsement is only to transfer the property in the instrument to the transferee, but under section 8 of the Transfer of Property Act, all the legal incidents of such property are transferred. Such incidents include *inter alia* where the property is a debt or actionable claim, the securities therefor, but not arrears of interest accrued before the transfer. (*b*) Whether by an indorsement of a pro-note, an assignment of the original debt is also effected is dependent upon the facts of each case. If the loan had been granted on the security of the negotiable instrument, and there is no cause of action independent of it, the indorsee is not entitled to fall back upon the original debt, if for any reason the negotiable instrument is inadmissible in evidence. (*c*)

Indorsement "in blank" and "in full".

*** 16.** (1) If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said be "in full;" and the person so specified is called the "indorsee" of the instrument.

"Indorsee."

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

(*a*) *Fox, Walker & Co.*, In re (1880) 15 Ch. D. 400.

(*b*) *Gulam Hussein* v. *Clara D'Souza*, 53 Bom. 819; cf. *Imperial Bank of India* v. *Bengal National Bank*, 59 Cal. 877 (P. C). See *Nataraja* v. *Ayyasami*, 32 M. L. J. 354.

(*c*) *Ram Jas* v. *Shahabuddin*, (1927) Lah. 89.

* Section 16 was re-numbered (16) (1), and sub-section (2) was inserted by sec. 3 of Act V of 1914.

Sec. 17.

NOTES.

'In blank.'

An indorsement is said to be in blank when the indorser merely signs on the instrument, without mentioning the name of the person in whose favour the indorsement is made. In such a case, so long as the indorsement continues blank, the property in the negotiable instrument may be passed by mere delivery, exactly as if it were payable to bearer. For " there is no difference between a note indorsed in blank and one payable to bearer. They both go by delivery, and possession proves property in both cases." (*a*) Hence, it has been held that a transferee by mere delivery of such instrument is not a party to it; the payee is not liable under it, nor is he entitled to the privileges thereof. (*b*) Any *bona-fide* holder of an instrument indorsed in blank may constitute himself the assignee by making it payable to himself, *e. g.*, by writing over the indorser's name " pay the contents to A. B."

'In full.'

When the indorsement contains not only the signature of the indorser, but also the name of the person in whose favour the indorsement is made, then that indorsement is said to be *in full or special*. The ordinary form of a full indorsement is, " pay to A. B. or order " ; even " pay A. B." is a special indorsement and the bill is payable to him or his order. (*c*) It is enough if there are words equivalent to a direction to pay though there are no actual words of direction, since no particular form is prescribed, and as such necessary; so that an indorsement to the effect that the note has been made over to——on a particular date signed by the payee is an indorsement in full and can operate as negotiation when the instrument is delivered. (*d*) And this indorsement prevents the bill from being transferred by anybody but the indorsee; and none but the special indorsee or his legal representative can sue upon it. (*e*)

Ambiguous instruments.

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

(*a*) *Peacock* v. *Rhodes*, (1781) 2 Doug. K. B. 633; see notes to sec. 54, *post*.

(*b*) *Valjee* v. *Harsook*, 62 M. L. J. 239.

(*c*) Sec. 50, Ill. (c), *post*.

(*d*) *Srinivasa* v. *Venkatammal*, 24 M. L. J. 296; *Sivaramakrishna* v. *Moideen*, 33 Mad. 34.

(*e*) Sec. 48, *post*.

NOTES.

Ambiguous instruments.

Where in a bill the drawer and the drawee are the same person, or where the drawee is a fictitious person, or incapable of contracting, or generally where an instrument is made in terms, or in form so ambiguous that it is doubtful whether it is a bill of exchange or a promissory note, the holder may treat it as either at his option. (*a*) Therefore an instrument in the form of a promissory note but which in addition is addressed to a third person who accepts it, may be treated by the person who receives it, either as a bill or a note against the maker, and may be declared on as such. (*b*) This principle has been carried a little further and a person who accepted an instrument really a hundi, but purporting to be a promissory note was held liable on it even though his name was not indicated therein as a drawee, (*c*) as his acceptance was not inconsistent with any address on the instrument. But where, however, the instrument in form a promissory note with no indication of the drawee, was accepted by a person even before the drawer signed his name, it was held that the instrument was not a bill of exchange and that the acceptor was not liable on his acceptance. He was, however, made liable as the maker of a promissory note, the necessary leave to amend having been granted. (*d*) Again, where an instrument in the form of a bill of exchange was not addressed to any one, it may be construed as a promissory note as that will be giving effect to the intention of the parties. (*e*) In all cases where the drawer and the drawee are the same person (*f*) or where a firm draws on its own branch at some other place (*g*) the instrument, although it be declared upon as a bill, may be regarded in legal effect as a promissory note, in which case the drawer will be bound without presentment for payment or acceptance or notice of dishonour. (*h*) It is open to the holder to treat the instrument as a bill of exchange, and the drawer will in that case be estopped from alleging that it was not a bill of exchange on the principle applied in *Goodwin* v. *Robarts*. (*i*) But, this option given to

(*a*) B. of Ex. Act, sec., 5 (2). *Capital and Counties Bank* v. *Gordon*, (1903) A. C. 240; *Bibi Kazmi* v. *Lachman*, (1930) Pat. 239.

(*b*) *Edis* v. *Bury*, (1827) 6 B. & C. 433; see *Block* v. *Bell*, (1831) 1 Moo & Rob. 149.

(*c*) *Jogeshchandra* v. *Md. Ibrahim*, 57 Cal. 695.

(*d*) *Mason* v. *Lack*, (1929) 140 L. T. 696.

(*e*) *Fielder* v. *Marshall*, (1861) 30 L. J. C. P. 158; *Peto* v. *Reynolds*, (1854) 9 Exch. 410.

(*f*) See *Banco De Portugal* v. *Waddell* (1880) 5 A. C. 161 (where two persons drew on themselves under different names); *Jalanchand* v. *Assaram*, 22 C. L. J. 22; *British Trade Corporation Ltd.* In re, (1932) 2 Ch. 1.

(*g*) *Radha Kishan* v. *Hira Lal*, 58 I. C. 313.

(*h*) *Lachman Prasad* v. *Ramchandra*, 51 I. C. 859.

(*i*) (1875) 1. A. C 476, 490; *Willans* v. *Ayers*, (1877) 3 A. C. 133; see *Harjiban* v. *Bhagwan*, 7 B. L. R. (O. C. J.) 102, on appeal *Ibid*, 535.

Sec. 17.

the decree-holder does not seem to be available to the drawer of the instrument when he draws on himself, for an instrument in which no action can be brought by the drawer, can hardly be said to be a bill of exchange within the meaning of the Act. (*a*) Sometimes the drawer and the payee may be the same person, as where the bill is drawn payable to, or to the order of the drawer ; (*b*) and an instrument directing payment "to——order" is a bill payable to drawer's order. Such instruments when indorsed by drawer can be treated only as bills. (*c*) The same is the case when it is expressed to be payable to drawer's order. (*d*)

Inchoate instruments.

It is necessary in this connection to keep clear the distinction between an ambiguous instrument and an inchoate instrument. In the case of instrument ambiguous in nature, the court, acting on the principle that a construction most favourable to the validity of the instrument must be adopted, (*e*) construes the instrument as a bill or a note as may be convenient. An inchoate instrument operates only as an authority to holder to fill up the blanks ; and till that is done no liability arises. Thus, an instrument containing neither the name of a payee nor of a drawer, though the defendant to whom it was addressed had accepted the instrument, was held to be neither a bill nor a note. (*f*) When an agent draws a bill upon the principal under his authority in the course of his business, the holder may treat the instrument as a bill or note, as the drawer and drawee are the same person. (*g*) So also if a partnership carries on business at two places, and one branch draws upon another branch, the holder has his option under this section. (*h*) Again if the directors of a Joint Stock Company draw a bill in the name of the Company upon the cashier, the holder may treat the instrument as a note. (*i*) The reason of the rule is that the words in an instrument ought to be construed strictly against the person using them. In a case where the directors issued an instrument containing words "We promise to pay on account of the proprietors of the company to the order of C. L. & Co.," it was

---

(*a*) *Colonial and Counties Bank* v. *Gordon*, (1903) A. C. 240, 250; *Bibi-Kazmi* v. *Lachman*, (1930) Pat. 239.

(*b*) *Cf.* B. of Ex. Act, sec. 5 (1).

(*c*) *Chamberlain* v. *Young*, (1893) 2 Q. B. 206; Cf. *Provot* v. *Abbott*, (1814) 5 Taunt 786.

(*d*) B. of Ex. Act, sec. 5 (1).

(*e*) *Mare* v. *Charles*, (1856) 5 E. & B. 978, 981.

(*f*) *M'Call* v. *Taylor*, (1865) 34 L. J. C. P. 365.

(*g*) *Daniel*, sec. 128.

(*h*) *Miller* v. *Thompson*, (1841) 3 M. & G. 576 ; Cf. *Willans* v. *Ayers*, (1877) 3 A. C. 133 (P. C.) ; Re *Commercial Bank of South Australia*, (1887) 36 Ch. D. 522, 525 ; *Capital and Counties Bank* v. *Gordon*, (1903) A. C. 240, 250 ; *Radha Kisan* v. *Hira Lal*, 58 I. C. 313 ; *Lachman* v. *Ramachandra*, 51 I.C. 859.

(*i*) *Allen* v. *Sea, Fire and Life Assurance & Co.*, (1850) 9 C. B. 574.

held that the instrument might be treated either as a bill or as a note. (*a*)

An instrument in the following form—"Two months after date I promise to pay to T. R. L. or order £99-15s. for value received," and in the corner was written 'J. E. Oliver,' with the acceptance of J. E. Oliver written across, the instrument may be sued upon as a bill. (*b*) An instrument purporting to be a promissory note in which there is no mention of a drawee may, if an acceptance is indorsed thereon be treated as a bill of exchange by the holder. A person indorsing an acceptance admits himself to be a drawee, and becomes liable thereon, though not named as a drawee, provided his acceptance is not inconsistent with the address on the bill of exchange. The acceptor having signified his acceptance, is estopped from contending that he is not the drawee; of course, if a drawee is already indicated, an acceptance by a third party cannot make him liable as an acceptor of a bill indorsed to another. (*c*) An instrument in the form of a bill except that the word 'at' is substituted for 'to' before the name of the drawee, may be treated as a bill. (*d*)

It is to be borne in mind that the holder alone has the option given in the section; but the holder need not necessarily be a subsequent indorsee for value. The same rule will apply to the original parties, if it be clear that it was the intention of one to give and the other to receive a document capable of being negotiated as a bill of exchange in the market. (*e*) Though the right of election given under this section is a privilege which he is entitled to take full advantage of, the same cannot be taken away by section 6 of the Stamp Act. (*f*) Yet if he once elects either way, he cannot afterwards fall back and say that it is the other kind of instrument. (*g*) And in the event of drawer's bankruptcy only one proof is allowed against the estate and there cannot be two proofs by reason of the form of the instrument. (*h*)

Where amount is stated differently in figures and words.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

(*a*) *Forbes* v. *Marshall*, (1855) 11 Ex. 166.

(*b*) *Lloyd* v. *Oliver*, (1852) 18 Q.B. 471.

(*c*) *Davis* v. *Clarke*, (1844) 6 Q.B. 16; *Steele* v. *M'Kinlay*, (1880) 5 A. C. 754, 765, 707.

(*d*) *Shuttleworth* v. *Stephens*, (1808) 1 Camp. 407; *Allan* v. *Mawson*, (1814) 4 Camp. 115.

(*e*) *Willans* v. *Ayers*, (1877) 3 A. C. 133, 143.

(*f*) 63 M. L. J. (N. R. C.) 3, where it was held that sec. 6 of the Stamp Act may be read as a proviso to this section.

(*g*) *Sulleman* v. *The New Oriental Bank Corporation, Ltd.*, 15 Bom. 267.

(*h*) *Banco De Portugal* v. *Waddell*, (1880) 5 A. C. 161.

Sec. 18.

NOTES.

Generally, the sum for which an instrument is drawn payable is expressed in words in the body of the instrument so as to avoid the peril of any alteration in the sum. It is also usual to specify the amount in figures in a corner or in the margin of the instrument. These figures are added in order to strike the eye immediately, and are in fact an index or summary of the contents of the bill ; such a memorandum is not, however, really a part of the instrument. (*a*) When a difference arises between the sum expressed in words in the body of the instrument, and that superscribed in figures, the former will be taken to be the sum for which the instrument was made payable, and from the peremptory nature of the section, it would appear that no evidence ought to be admitted to explain the ambiguity. (*b*) The rule of construction that an instrument must be taken most strongly against the person making it is not applicable to such a case as the present, where the body of the instrument expresses in clear terms the amount payable, and the ambiguity arises only from a different amount being expressed in the margin. This rule is founded on common sense and experience that a man is more apt to commit an error with his pen in writing a figure than in writing a word. From the above principle, it follows that if the amount is stated in figures in the body of the instrument, and a different amount is expressed in words in the margin or in a separate memorandum on the instrument, words ought to be given the preference, they forming the better and more solemn statement. (*c*) So strong is the presumption as to the correctness of the sum expressed in words that it has been held that where in an instrument there is an apparent alteration in the margin, the holder has a right in the absence of notice to assume that it was altered properly. (*d*) Where the words in the body of an instrument are ambiguous, the figures in the margin and the stamp may be looked at in construing them ; (*e*) or even if there be an omission in the body of the instrument, it may be added to by superscription. (*f*) If an instrument is partly written and partly printed, and there is a difference between the printed and the written words, it is suggested that the written part ought to control the instrument, as it is likely to be more in consonance with the intention of the parties. (*g*)

Amount in figures and in words.

Written and printed.

(*a*) Cf. *Garrard* v. *Lewis*, (1882) 10 Q. B. D. 30, 32, 35.

(*b*) Cf. *Saunderson* v. *Piper*, (1839) 5 Bing N. C. 425.

(*c*) *Ibid*, per Coltman, J.

(*d*) *Garrard* v. *Lewis*, (1882) 10 Q.B. D. 30, 35.

(*e*) *Hutley* v. *Marshall*, (1882) 46 L. T 186 (C.A.) ; *Heeney* v. *Addy*, (1910) 2 I. R. 688, quoted in 2 Hals. 613, note (p).

(*f*) *R.* v. *Elliot*, (1777) 1 Leach, 175.

(*g*) Cf. *Paul Beier* v. *Chotalal*, 30 Bom. 1 ; *Gumm* v. *Tyrie*, (1864) 33 L. J. (Q B.) 97, 111 ; Daniel, sec. 86 ; Cf. *Haji Hasam* v. *Chotalal*, 29 Bom. 360.

Obvious mistakes or omissions in the written words will not invalidate the instrument where the intention is clear. (*a*)

Sec. 19.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Instruments payable on demand.

NOTES.

Time of payment.

Mention of cheques in the section seems to be unnecessary, as from the very definition of a cheque given in the Act, it is clear that it cannot be expressed to be payable otherwise than on demand. (*b*) A bill is payable on demand when it is expressed to be payable on demand, or at sight, or on presentation, or when no time for payment is specified in it. (*c*) If the time for payment is left blank, *e. g.*, if the instrument be payable—months after date, it is payable on demand; but oral evidence may be admissible to show when the amount under it is due, such evidence being only for the purpose of explaining something about which the bill is silent. (*d*) A note payable to bearer generally is payable on demand, (*e*) but such note will, under the Indian Paper Currency Act, be invalid. Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts or any indorser who so indorses it be deemed a bill payable on demand. (*f*)

For other bills and notes payable on demand, see sections 21 and 22; as to presentment for payment, see notes to section 74.

The cause of action on such bill or note arises on the date of the instrument, (*g*) and no demand need be proved to complete the cause of action. (*h*) If the instrument is one payable when 'demanded,' this, though an unusual phrase means the same thing, so that time runs in such a case from the day of the execution of the note But if payable "on demand with interest after six months," this means that the demand may be immediate but that the interest will not begin unless the note remains unpaid for six months, and not that the

(*a*) *R.* v. *Post*, (1806) R. & R. 101; *Phipps* v. *Tanner*, (1833) 5 C. & P. 488.
(*b*) Sec. 6, *ante*.
(*c*) Sec. 21, *post*.
(*d*) Ind. Evidence Act, sec. 92.
(*e*) *Whitlock* v. *Underwood*, (1823) 2 B. & C. 157.
(*f*) B. of Ex. Act. sec. 10 (2).
(*g*) Ind. Limitation Act, Art. 73; *Brajendra* v. *Hindustan Co-operative Insurance Co.*, 44 Cal. 978; *Framroz* v. *Mohamed Essa*, 50 Bom. 266; *Durga Prosad* v. *Kalicharan*, 40 C. L. J. 84; *Bishunchand* v. *Babu Andu*, 2 Pat. L. J. 451.
(*h*) Re *George, Francis* v. *Bruce*, (1890) 44 Ch. D. 627; *Norton* v. *Ellam*, (1837) 2 M & W. 461; *Rowe* v. *Young*, (1820) 2 Brod. & B. 165; *Secy. of State* v. *Radhika Prasad*, 46 Mad. 259, 288; Cf. *Seetharamayyar* v. *Munisami*, (1919) M. W. N. 185.

Sec. 20.

demand must be deferred until after six months. (*a*) If a bill though payable on demand, is accompained by a written agreement fixing a period for payment, time begins to run on the expiry of the period. (*b*)

Inchoate stamped instruments.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

NOTES.

Parties often lend their mercantile credit to others by signing their names on blank papers to be afterwards filled up as bills of exchange or promissory notes over their signatures. (*c*) By such signatures, they intend to bind themselves as drawers or makers or acceptors or indorsers, and the presence of their names on the blank paper purports to be an authority granted to the holder to fill up the blanks as a complete negotiable instrument, and when so filled up, such parties become as absolutely bound in the capacity in which they signed, as if they had signed them after their terms were written out; but till the blanks are so filled up, the instrument is not a valid

---

(*a*) 1 Parsons, (2nd Edn.), 38; *Gopaliar* v. *Maiyappa*, 8 L. W. 501.

(*b*) *Annamalai* v. *Velayuda*, 39 Mad. 129 (F. B.).

(*c*) Daniel, sec. 142.

one and no action is maintainable on it. (*a*) The capacity in which a party to a bill with blanks becomes bound is to be determined by the mode and place in which the signature is made. If a person signs his name beneath the word " accepted " or simply writes his name across the face of the bill, he will be liable as acceptor ; and as an indorser, if he writes his name across the back of a blank paper duly stamped and delivered. (*b*) Although the party may prescribe a limit to the holder, a *bona fide* transferee from him ignorant of such limitations of authority when he takes an instrument which has exceeded it, can recover upon it. (*c*)

'Delivered.'

The section requires as a condition of liability that the person signing should deliver the instrument to another. This is also the rule under the English law ; and in addition, the section of the English Act requires that it should be delivered in order that it may be converted into a bill. (*d*) Thus, where a man signed a blank acceptance and placed it in his drawer, from where it was stolen, completed and negotiated, it was held that he was not liable even to a holder in due course, as he never intended that the bill should be filled up by any body and never delivered it to be so filled up. (*e*) If such an inchoate instrument is delivered to another for safe custody, under the English law the person so delivering would not be liable even to a holder in due course, as he did not deliver it for the purpose of converting it into a bill, (*f*) and it is submitted that the same should be the rule in India. But under the Indian law, the point is not free from difficulty, for in this section there is no such condition as in the corresponding section of the English Statute. To raise the *prima facie* presumption of authority, all that is required under this section is only a delivery by the person to another. But as the section gives the authority to fill up only to a *holder*, it pre-supposes a negotiation on the part of the person signing the blank or incomplete instrument ; and thus it may be said that the English and the Indian law are the same. (*g*)

According to the section, the signature ought to be on a paper

---

(*a*) *Montague* v. *Perkins*, (1853) 22 L. J. (C.P.) 187 ; Ex parte *Hayward*, (1871) L. R. 6. Ch. App. 546 ; *Dunn, Ltd.* v. *Jefferson*, 69 S. J. 725 ; *M.N.P.L. Firm* v. *Kirwan Gyan*, 17 I. C. 915.

(*b*) *Foster* v. *Mackinnon*, (1869) L.R. 4 C. P. 704.

(*c*) B. of Ex. Act, sec. 20 ; *Awde* v. *Dixon*, (1851) 6 Ex. 869 ; *Hogarth* v. *Latham & Co.*(1878) 3 Q.B D. 643; *Schultz* v. *Astley*, (1836) 2 Bing. N.C. 544 ; *Foster* v. *Mackinnon*, (1869) L. R. 4 C. P. 704, 712 ; *Montague* v. *Perkins* (1853) 22 L. J. (C. P.) 187; *Temple* v. *Pullen*, (1853) 8 Ex. 389 ; Cf. *Herdman* v. *Wheeler*, (1902) 1 K. B. 361, where all the above cases are reviewed.

(*d*) B. of Ex. Act. Sec. 20 (1).

(*e*) *Baxendale* v. *Bennett*, (1878) 3 Q. B. D. 525 (C. A.); *Awde* v. *Dixon*, (1851) 6 Ex. 869 ; Re *Hayward*, Ex parte, *Hayward*, (1871) 6 Ch. App. 546.

(*f*) *Smith* v. *Prosser*, (1907) 2 K. B. 735.

(*g*) *Punjab National Bank, Ltd.* v. *Mercantile Bank of India, Ltd.*, 13 Bom. L. R. 835.

Sec. 20.

Unstamped paper.

stamped in accordance with the law in force relating to the stamping of negotiable instruments. If the signature be on a blank paper not stamped, the statutory estoppel under the section cannot arise, though under the general principles of estoppel, the signor may be held liable on the ground that such signature makes a representation that he will pay. (*a*) If the instrument be void under the law for want of stamp, then he may not be liable at all. The stamp that is to be affixed to the paper intended to be issued blank must be according to the law in force at the time it is so signed and delivered in British India. The section does not provide for cases of foreign bills drawn in blank and completed in British India. The statutory estoppel provided for in the section will not arise in such cases, though by the Common Law estoppel, the parties may still be bound. (*b*) Even where bills are drawn outside British India, if they are drawn on paper stamped with a stamp in force in British India at the time, there is nothing to prevent the provisions of the section being applicable.

Blank as to date,

as to drawer,

The instrument may be wholly blank or incomplete in any particular; in either case, the holder has the authority to make or complete the instrument as a negotiable one. If the date be left blank, any holder has the right to insert the true date; (*c*) should he insert a wrong one, the parties on the instrument would still be bound. If a man accepts a bill blank as to the name of the drawer and delivers the same to another, he is entitled to insert his name as a drawer, (*d*) or put it in negotiation, the transferee acquiring that right; (*e*) in that case, the acceptor will be estopped from denying the regularity of his acceptance and will be liable as acceptor; and cannot show that either the drawing or indorsement is a forgery. (*f*) Till it is so completed by filling up the drawer's name, the instrument cannot be a bill and no liability will arise on the same. (*g*) This right of completing the instrument may be exercised even after the death of

---

(*a*) Cf. *Smith* v. *Prosser*, (1907) 2 K. B. 735, 751.

(*b*) *Lloyd's Bank, Ltd.*, v. *Cooke*, (1907) 1 K. B. 794. See *Barker* v. *Sterne*, (1854) 9 Ex. 684; Cf. *Wahidunnessa* v. *Surgadass*, 5 Cal. 39 (case of a blank bond).

(*c*) *Brian* v. *Quackerstein*, (1848) 12 L. T. (O. S.) 153.

(*d*) *Scard* v. *Jackson*, (1875) 34 L. T. N. S. 65 n; *Fareeks* v. *Atkins*, (1893) 10 T. L. R. 178

(*e*) *Herdman* v. *Wheeler*, (1902) 1 K. B. 361, 369; *Hogarth* v. *Latham* & Co., (1878) 3. Q. B. D. 643; *Schultz* v. *Astley*, (1836) 2 Bing. N. C. 544; *Scard* v. *Jackson*, (1875) 34 L. T. (N. S.) 65n. *London and S. W. Bank* v. *Wentworth*, (1880) L. R. 5 Ex. D 96.

(*f*) Cf. *The London and South Western Bank* v. *Wentworth*, (1880) L. R. 5 Ex. D. 96; *Farr* v. *Ward*, (1837) 2 M. & W. 844; *Glenie* v. *Bruce Smith* (1908) 1 K. B. 263 (C. A.); *Gooch*. In re, (1921) 2 K. B. 593.

(*g*) *Stoessiger* v. *S. E. Ry. Co.*, (1854) 3 E. & B. 549; *M. N. P. L. Firm* v. *Kirwan Gyan*, 17 I. C. 915; Ex parte *Hayward*, (1871) L. R. 6 Ch. App. 546.

the acceptor. (*a*) When an instrument which was made payable to——order, the blank never having been filled in, must be construed as meaning to my order, and on indorsement by the drawer, the instrument is a valid bill. (*b*)

An indorsement on a blank stamped paper, or an incomplete negotiable instrument will operate as a letter of credit for any sum payable at any time consistently with the stamp which the person to whom he entrusts the instruments may insert therein. (*c*) On the same principle, where a bill to drawer's order and accepted was indorsed by a third party to render himself liable in case of default by the acceptor, and below the signature the drawer indorsed his name, it was held, that the bill was a valid one, though incomplete at first, and that it could be completed by the drawer's indorsement and the right of the third party to the drawer was not affected by the position of the signatures. (*d*)

as to amount,

The authority implied by a signature to a blank instrument is so wide that the party so signing will be bound to a holder in due course, even though the holder was authorised to fill for a certain amount, and he *in fact* has inserted a greater amount ; but it is necessary that the sum ought not to exceed the amount covered by stamp. (*e*) The holder cannot attach other un-signed stamp papers to the one signed and make an instrument for an amount outside the value covered by the stamp. (*f*)

as to payee,

Bills and notes are often executed with the name of the payee left in blank to be afterwards filled up by the actual holder, the object being to enable the owner to pass it off to another without incurring the responsibility as an indorser ; and any *bona fide* holder for value may fill it up with his own name and sue upon it ; (*g*) and until so filled up, it does not import a contract with him and he cannot recover. The drawee cannot escape liability by showing that the person to whom the instrument was handed, drew the bill payable to a fictitious payee or order, and was indorsed by him. (*h*)

(*a*) *Carter* v. *White*, (1882) 20 Ch. D. 225 affirmed in, (1883) 25 Ch. D. 666 ; Cf. *Usher* v. *Dauncey*, (1814) 4 Camp. 97 ; *Hatch* v. *Searles*, (1854) 2 Sm. and G. 147.

(*b*) *Chamberlain* v. *Young*, (1893) 2 Q. B 206.

(*c*) *Russel* v. *Langstaffe*, (1780) 2 Doug. K. B. 514, per Lord Mansfield.

(*d*) *National Sales Corpn.* v. *Bernardi*, (1931) 2 K. B. 188.

(*e*) *Swan* v. *North British Australasian Co.*, (1863) 2 H. & C. 175, 184 ; *Lloyd's Bank* v. *Cooke*, (1907) 1 K. B. 794 ; *Garrard* v. *Lewis*, (1882) 10 Q. B. D. 30, 33 ; *Herdman* v. *Wheeler*, (1902) 1 K. B. 361.

(*f*) *Gokuldas* v. *Radhakisan*, 54 I. C. 3.

(*g*) *Schultz* v. *Astley*, (1836) 2 Bing. N. C. 544 ; *Russel* v. *Langstaffe*, (1780) 2 Doug. K. B. 514 ; *Cruchley* v. *Clarance*, (1813) 2 M. & S. 90 ; *Crutchly* v. *Mann*, (1874) 5 Taunt, 529.

(*h*) *Collis* v. *Emmet*, (1790) 1 Hy. Bl. 313.

Sec. 20.

Authority to fill up.

Under the English law, the instrument must be filled up within a reasonable time (*a*) and strictly in accordance with the authority given, (*b*) and the person authorised is not justified in varying or altering the material terms of the instrument, nor can he convert the plain meaning and the scope of the same by filling up blanks repugnant to what was clearly and plainly expressed in the instrument itself when delivered; but in no case is the holder in due course to be prejudiced by an unauthorised insertion in a blank instrument. Thus, the person in possession of a bill incomplete in any material particular has a *prima facie* authority to fill it up, and thus he is an agent of the person delivering the blank instrument. (*c*) "It is in effect a transferable authority to create a bill and while incomplete is subject to the ordinary rules of law relating to authorities. For example, an authority coupled with an interest is not revoked by the death of donor or donee, while an authority not coupled with an interest is revoked by the donor's death." (*d*) This authority is not restricted to the person who actually receives the instrument from the person, but also extends to any person claiming from him. (*e*) This authority does not, however, enable a person to stick together several signed stamp papers delivered so as to make one single instrument of them, (*f*) nor does it convey to him authority to insert a particular place of payment before the acceptance. (*g*) Such an addition is equivalent to a material alteration.

In excess of authority.

When the holder exceeds the authority in filling up the blank, he can of course derive no benefit from it; and American decisions go to the length of holding that his act is an utter nullity and no advantage can accrue to him even to the extent of the authority given to him. (*h*) Under the proviso to the section, the holder in such a case, will be entitled to recover, the sum which was originally intended to be paid. "As to a *bona fide* holder, the question as to the effect of the acceptance or indorsement having been written on a blank piece of paper can be of no importance unless he can be fastened with notice of that imperfection. If the holder has notice of the imperfection, he can be in no better situation than the person who took it in blank,

(*a*) Cf. *Montague* v. *Perkins*, (1853) 22 L. J. (C.P.) 187; *Temple* v. *Pullen*, (1853) 8 Exch. 389.

(*b*) B of Ex. Act, sec. 20 (1) & (2); *Watkin* v. *Lamb*, (1901) 85 L.T. 483.

(*c*) *Shantidas* v. *Hiralal*, 59 I. C. 657; 2 Halsbury 632; *Montague* v. *Perkins*, (1853) 22 L. J. C. P. 187.

(*d*) Chalmer's (9th Edn.) 59; 2 Hals, 619 (note b); *Crutchly* v. *Mann*, (1814) 5 Taunt. 529; *Scard* v. *Jackson*, (1875) 34 L T. 65 n.; *Carter* v. *White*, (1882) 20 Ch. D. 225, affirmed in (1883) 25 Ch. D. 666; *Usher* v. *Dauncey*, (1814) 4 Camp 97. But as to accommodation bills, see *Hatch* v. *Searles*, (1854) 2 Sm. & G. 147; *France* v. *Clarke*, (1884) 26 Ch. D. 257, 262.

(*e*) *Ibid*; *London & S. W. Bank* v. *Wentworth*, (1880) L. R. 5 Ex. D. 96.

(*f*) *Gokuldas* v. *Radhakisan*, 54 I. C. 3.

(*g*) *Hanbury* v. *Lovett*, (1868) 18 L. T. 366.

(*h*) Daniel, sec. 147.

as to any right against the acceptor or indorser who gave it in blank." (*a*) Especially is it the case when the person takes the bill in an incomplete form, for, he cannot be a *bona fide* holder for value as he has taken a piece of blank paper and not a bill, (*b*) and he can take it as a bill only under the authority given to his transferor. In that case, if he does not satisfy himself as to the extent of the authority of the person transferring the bill, he acts at his peril. (*c*) It is only a *bona fide* holder for value that is protected, so that if the holder had taken the bills for betting transactions, and realised the amount, the maker is entitled to recover the amount. (*d*) There is in that case no presumption in his favour. (*e*) But, as to a *bona fide* holder for value, he is absolutely protected, and he is entitled to recover though the amount for which it was intended to be issued is materially altered. (*f*)

It is to be noticed that the authority to fill up is given only to a holder of an instrument; so an agent of the person issuing the instrument under the section does not come within the purview of this section; his authority will be regulated by the general law applicable to such authority. (*g*) In England, it has been doubted whether the protection in favour of a holder in due course applies to the person who is the first holder of the instrument and in point of fact, to the payee, (*h*) that is to say, whether a payee can be a holder in due course. In Indian law, there is no room for controversy, as under section 9 of the Act, 'payee' is included in the definition of a "holder in due course." (*i*)

"At sight." "On presentment." "After sight."

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for

(*a*) *Hatch* v. *Searles*, (1854) 2 Sm. & G. 147, 153, per Stuart, V. C.

(*b*) *Goldsmid* v. *Hampton*, (1858) 5 C. B. N. S. 94.

(*c*) *Awde* v. *Dixon*, (1851) 6 Ex. 869; *Hogarth* v. *Latham & Co.*, (1878) 3 Q. B. D. 643; *France* v. *Clark*, (1884) 26 Ch. D. 257, 272; *Watkin* v. *Lamb*, (1901) 85 L. T. 483. Cf. *Herdman* v. *Wheeler*, (1902) 1 K. B. 361; for the contrary view in America, see Daniel, sec. 147.

(*d*) *Paine* v. *Bewan*, (1914) 110 L. T. 933.

(*e*) *Hogarth* v. *Latham, & Co.*, (1878) 3 Q. B. D. 643, 646.

(*f*) *Gerrard* v. *Lewis*, (1882) 10 Q. B. D. 30.

(*g*) *Smith* v. *Prosser*, (1907) 2 K. B. 735; *Montague* v. *Perkins*, (1853) 22 L. J. C. P. 187.

(*h*) *Herdman* v. *Wheeler*, (1902) 1 K. B. 361, distinguished in (1907) 1 K. B. 794; *Smith* v. *Prosser*, (1907) 2 K. B. 735; see also *Talbot* v. *Von Boris*, (1911) 1 K. B. 854 (where the provision of sec. 30, cl. (2) of the English Act corresponding to sec. 118 (g) of the Indian Act has been held inapplicable to the case of a person to whom the bill was originally delivered).

(*i*) *Lloyd's Bank* v. *Chartered Bank of India*, (1929) 1 K. B. 40, 57.

Sec. 21. sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

NOTES.

Differences between 'on demand' and 'at sight' etc.

1. In presentment.

Though the expression "at sight" or "on presentment" mean on demand, (*a*) those instruments containing such words differ in certain respects from the instruments expressed to be payable on demand, or where no time is specified. In the case of bills or notes payable at sight or on presentment, it is necessary that they must be presented before payment can be demanded. In the case of other instruments payable on demand, no demand is necessary, though the person liable to pay may insist upon the production of the instrument and delivery thereof to him under section 81. (*b*)

2. In limitation.

Again, the period of limitation in the case of bills of exchange payable at sight or after sight but not at a fixed time, runs from the date when the bill is presented. No provision is made in the Limitation Act for the case of promissory notes payable 'at sight' or 'on presentment' (which are in legal effect payable on demand). In such cases, if article 73 of the Limitation Act does not apply, the general article 80 will apply, and limitation will run from the date when the note becomes payable. (*c*)

In stamp.

Again, it is doubtful what stamp would be required for an instrument payable at sight or on presentment. It is not made payable on demand, though the effect on the expressions is to make it so. (*d*) The English Stamp Act provides specifically for such a case; under the Indian Act, it would seem that as a bill payable at sight or on presentment is *payable* on demand, the stamp necessary for a bill on demand might be sufficient. (*e*)

The expression "after sight" cannot generally be used in a bill or note by itself; the instrument must specify the period after sight at the end of which it is to become payable. When, however, the expression is used without the period being specified, the instrument cannot mean more than that it is payable at sight. (*f*)

(*a*) *Durga Prasad* v. *Kalicharan*, 40 C. L. J. 84.

(*b*) See notes to sec. 81, *post*.

(*c*) See *Holmes* v. *Kerrison*, (1810) 2 Taunt, 323, *Dixon* v. *Nuttall*, (1834) 1 Cr. M. & R. 307; see Appendix D.

(*d*) Cf. *Johnson* v. *Thomas*, (1784) 3 Doug. K. B. 421; *Slindy* v. *Henderson*, 4 B. & Ad. 590.

(*e*) Ind. Stamp Act, Sch. I, Arts. 13 and 49.

(*f*) Byles (19th Edn.) 79; see sec. 61, *post*; *Cf.* Lim. Act, Art. 70.

Sec. 22.

When a bill is payable so many days after sight, the days are counted from the day on which the bill is accepted or protested for non-acceptance, and not from the date of the bill, or from the day when the same came to the hands of the holder, or from the time when it was privately exhibited to the party on whom it was drawn, for it is necessary that it must appear in a legal way that the bill was presented for sight and that could be done either by the parties accepting the bill, or by protest, or by noting for non-acceptance. (*a*) But the words 'after sight' when used with reference to notes, must bear a different meaning from the same words on a bill, as the note is incapable of acceptance, and the expression merely imports that payment cannot be demanded till the note is exhibited to the maker. The section does not provide for the contingency which may arise when the drawee does not return the bill left with him for acceptance. (*b*)

"Maturity."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

NOTES.

Maturity of notes, etc.

This and the three following sections lay down rules for determining the maturity of negotiable instruments. Negotiable instruments payable on demand, or at sight or on presentment, become payable at once, and there is no question of maturity as regards them; (*c*) but they cannot be said to be overdue under section 59 so as to affect the subsequent holder with notice of defect of title. (*d*) A negotiable instrument payable after sight becomes payable only after the requirements under section 61 are complied with. As for the instrument payable at a certain period after date, or after sight or after a certain event, see notes to sections 23 and 24.

Though date is not an essential requisite for a negotiable instrument, it is absolutely necessary for computing the maturity of the instrument. The date upon the instrument is presumed to be the

(*a*) *Campbell* v. *French*, (1795) 6 T. R. 200; see notes to sec. 99, *post*.
(*b*) B. of Ex. Act, sec. 14 (3).
(*c*) *Hemadri* v. *Seshamma*, (1930) M. W. N. 1232.
(*d*) *Shaha* v. *Bengal National Bank*, 47 Cal. 861.

Sec. 22. date on which it is drawn (*a*) though that presumption may be rebutted. (*b*) A bill made on a Sunday is not invalid, nor is it invalid because the date is omitted, for date is not a material part of the bill, and may be proved by parol evidence. If a bill is payable two months after date and no date is mentioned therein, the court will intend it to be payable two months after the day on which it was made. (*c*) Where, however, a note dated January 1st and made payable at two months, had written across it a memo by the maker, before negotiation 'due March 4th,' it was held that it was not due before that date. (*d*)

Under the second paragraph of the section, three days of grace are allowed after the day on which a bill or note is expressed to be payable, except in cases of such bills and notes which are in effect payable on demand. In the Bill originally drafted, no days of grace were allowed, and Sir Henry Maine was for such omission; but the Select Committee introduced the provision to secure conformity with the English practice and at the International Conference which met at Hague, the English delegates, it is said, were strongly for the abolition of the days of grace.

Days of grace.

Days of grace are so called because they were originally allowed to the drawee by way of favour to enable him to provide himself with funds for payment without inconvenience. Though they were at first gratuitous and could not be claimed as of right by the person liable to pay, yet the laws of commercial countries and the custom of merchants have long since reduced them to certainty. And now, it is established that three days of grace attach to every bill or note which is not in legal effect payable on demand, at sight, or on presentment. The allowance of days of grace is regulated by the *lex loci solutionis* irrespective of the country where the bill is drawn, and the number of days of grace allowed in different countries differs considerably. When the question arises as to the law of a foreign country, it must be proved as a fact by the evidence of lawyers or other experts belonging to the country in question. (*e*) Though the section does not mention cheques, no days of grace are allowed for them, since they cannot be payable otherwise than on demand. Days of grace allowed are part of the Law Merchant and are to be judicially recognised, (*f*) and they form so completely a part of

---

(*a*) *Church* v. *Pontifex*, (1850) 9 C. B. 229; sec. 118 (b), *post*.

(*b*) *Owen* v. *Waters*, (1836) 2 M. & W. 91.

(*c*) *Hague* v. *French*, (1802) 3 Bos. & P. 173.

(*d*) *Fitch* v. *Jones*, (1855) 5 E. & B. 238.

(*e*) *Concha* v. *Murietta*, (1890) 40 Ch. D. 543 (C. A.).

(*f*) *Brandao* v. *Barnett*, (1846) 12 Cl. & F. 787.

Sec. 22.

the contract of a negotiable instrument that it is not due until the last day of grace, and a presentment for payment before the expiration of the days of grace is premature, and will not enable the holder to charge the antecedent parties. (*a*) The cause of action on dishonour does not arise until the following day after the third, as the acceptor may, in spite of refusal in the first instance, make a valid payment at any time in the course of the day, and if he does so, the notice of dishonour becomes infructuous. (*b*) A bill not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable. So that, if a hundi is drawn on May 7th, payable after sixty-one days, the indorsees will not be liable to present it before the 10th of July. (*c*)

If a bill or note is payable in instalments, it is entitled to days of grace on each instalment, as the instrument is in effect so many instruments in one. (*d*) The use of the word " punctually " in a promissory note re-payable by instalments does not deprive the maker of days of grace. (*e*) Days of grace are calculated by excluding the day on which the amount under the instrument is expressed to be due. Again, the days of grace are all counted consecutively, and in direct succession, without any deduction or allowance for holidays between the first and the last day of grace. (*f*) As the allowance of the days of grace is an incident attached to the contract by custom recognised by Statute, it is in the power of the parties to such contract to disallow days of grace by any language of that import, such as, " without grace ", " no grace " or " fixed " ; but the section is not clear on the point. In Madras (*g*) the point was raised and one of the Judges differing from the other Judge, held that the parties to a negotiable instrument could not dispense with days of grace. In support of this, the absence of a proviso, permitting them to contract out of days of grace, in the section of the Indian Act as we find in the English Act, is strongly relied upon. It is rather difficult to see whether this failure to save the rights of the parties is intentional or purely accidental. But it may be remembered that the provision as to days of grace is primarily for the benefit of the maker of the note or the instrument and so long as the giving up of a benefit secured by law does not offend against public policy, the Court will certainly try to enforce the contract. Since the gene-

Contract to the contrary

(*a*) *Wiffen* v. *Roberts*, (1795) 1 Esp. 261, 262.
(*b*) *Kennedy* v. *Thomas*, (1894) 2 Q. B. 759.
(*c*) *Ganga* v. *Hira*, 39 All. 86.
(*d*) *Oridge* v. *Sherborne*, (1843) 11 M. & W. 374.
(*e*) *Schaverien* v. *Moriss*, (1921) 37 T. L. R. 366.
(*f*) *Campbell* v. *French*, (1795) 6 T.R. 200.
(*g*) *Valliappa* v. *Subramanian*, 26 M. L. J. 494.

Sec. 23.

ral rules contained in the Contract Act are applicable to a bill or note, in the absence of any express provision to the contrary in the Negotiable Instruments Act, (*a*) it may be safely said that a contract out of days of grace will be good. (*b*)

Interest is chargeable on the period of grace allowed. (*c*)

Calculating maturity of bill or note payable so many months after date or sight.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

ILLUSTRATIONS.

(a) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(c) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(*a*) *Subba Narayana* v. *Ramaswami*, 28 Mad. 244 : 30 Mad. 88 (F. B.).

(*b*) B. of Ex. Act, sec. 14.

(*c*) Daniel, sec. 614.

NOTES.

Sec. 23.

English Law.

The section reproduces the English law as it was on the subject with one slight difference. The English rule with regard to bills of exchange made payable a stated number of months after sight which have been accepted for honour was that the period stated should be held to terminate on the day of the month which corresponds with the day on which the bill was accepted for honour. (*a*) This rule has now been changed by the Bills of Exchange Act (*b*) which now provides for calculating maturity from the date of noting for non-acceptance and thus "brings the law into accordance with mercantile understanding, and gets rid of an inconvenient ruling to the effect that maturity was to be calculated from the date of acceptance for honour". (*c*) The Indian law still retains the old English rule. In the case of bills not so accepted for honour, the period of payment terminates on the day of the month which corresponds with the date of the instruments, or the day on which they are presented for acceptance, or are noted for non-acceptance. The last sentence of the section means nothing more than that the computation in case of bills or notes drawn at some months after date, sight or after a certain event, is always by calendar and not by lunar months. If the instrument is dated on an impossible day, such as, the 31st of September, the law will adopt the nearest day and the computation will begin from the 30th September. (*d*) On the same principle, if there is no corresponding day in the month in which the instrument is due, the period will be held to terminate on the last day of that month.

Indian Law.

What calendar.

Again, according to what calendar is the computation to be made? Generally, when a bill is drawn at one place and is payable at another, the time when the bill becomes due must be calculated according to the style of the place where it is payable, because the contract on the bill is deemed to have been made at the place, and consequently should be construed according to its laws. (*e*) In an early case in Bombay, before the passing of the present Act, it was held that in the case of Hindus, even if the promissory note bore English and Native dates, time should be calculated according to the Native calendar. (*f*) But now, the computation must always be made according to the British calendar. (*g*) If, however, there be an usage

(*a*) *Williams* v. *Germaine*, (1827) 7 B. & C. 468, 471.

(*b*) Sec. 65 (5).

(*c*) Chalmers (9th Edn.) 266, 267; *Williams* v. *Germaine*, (1827) 7 B. & C. 468, 471.

(*d*) But see *Alams Banee* v. *Mahomed Ruja*, 6 Cal. 239.

(*e*) *Rouquette* v. *Overmann*, (1875) L. R. 10 Q. B. 525.

(*f*) *Babaji* v. *Maruti*, 7 B. H. C. R. 77 (A. C. J.).

(*g*) General Clauses Act, sec. 3 (33) & (59). *Cf.* Ind. Limitation Act, sec. 25.

Sec. 24.

to the contrary, this rule cannot apply to instruments in oriental languages by reason of section 1.

Usances.

Foreign bills are generally drawn payable at what are called 'usances.' Usance signifies the time appointed for payment of bills drawn in one country and payable in another by the usage of those countries. It is generally fixed with reference to the distance between the countries and the facility of communication between them. The length of time denoted by the term varies with the country in which it is payable. Their existence and their duration will have to be proved in each case before the Courts will take notice of them.

Calculating maturity of bill or note payable so many days after date or sight.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

NOTES.

The same is the law, in England. (*a*) Though under the Common Law, there might have been doubts as to deeds and other non-commercial instruments, whether in the computation of time, the day of date is to be excluded or not, it has been settled that in the case of commercial instruments drawn payable at so many days after sight, the day of the date must be excluded. (*b*) In like manner, in case of instruments payable a certain number of days after the happening of a certain event, the day on which such event happens is to be excluded. When a bill drawn at so many days after date is not dated, the day on which it is made will be taken as the starting point from which to compute the time when it is payable. (*c*)

In America, the day of maturity is sometimes accelerated without impairing the negotiability of the paper. Thus, it is said that a note payable on a 'certain' day may also contain a clause that it should be payable on an earlier day if certain property is sold. Such a conditional promise does not affect the absolute promise to pay at a 'certain' date and if it is not performed, the absolute promise remains in full force.(*d*) Similarly a trade acceptance may provide

(*a*) B. of Ex. Act, sec. 14 (2).

(*b*) *Webb* v. *Fairmaner*, (1838) 3 M. & W. 473, 476; *Lester* v. *Garland*, (1808) 15 Ves. 248; *Nanak Singh* v. *Kesho Das*, 27 I. C. 608.

(*c*) *Giles* v. *Bourne*, (1817) 6 M. & S. 73.

(*d*) R. C. L. 908.

that if the acceptor suspends payment or becomes otherwise unable to pay, this trade acceptance shall become due and payable at the option of the holder. Such acceleration clauses in bills and notes are not destructive of negotiability. (*a*)

When day of maturity is a holiday.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation.—The expression "public holiday" includes Sundays, New Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the Official Gazette, to be a public holiday.

NOTES.

When day of maturity is a holiday.

The English law on the point is different. Under it when the last day of grace falls on a Sunday, Christmas day, Good Friday or any other day appointed by Royal Proclamation, the instrument is payable on the preceding business day; but when it falls on a Bank-holiday (other than Christmas Day or Good Friday), under the Bank Holidays Act, 1871, the instrument is due and payable on the succeeding business day. (*b*) The Indian Act places all holidays on the same footing, and enacts that if the day on which the instrument is payable is a holiday, it is payable the next preceding business day. This improvement, if it is one, was, it seems, suggested in Committee in England when the Bills of Exchange Act was being passed; but it was not adopted, as it was said that when two holidays came together, it was convenient that the due date of some bills should be thrown back and of others thrown forward, in order to obviate too great a press of business on any one day. (*c*)

Explanation.

Under the explanation to the section it will be seen that no Native holiday can be a public holiday, unless the Local Government declares it to be such in the Official Gazette. The powers of a Local Government under this explanation have been delegated to the Commissioner in Sindh by the Government of Bombay under section 2 of Act V of 1868. (*d*)

(*a*) See 9 Bom. L. J. 591, 592.
(*b*) B. of Ex. Act, sec. 14 (1).
(*c*) Chalmers (9th Edn.) 42.
(*d*) See Bombay Government Gazette, 1903, Part I, p. 449.

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES.

Capacity to make, &c., promissory notes, &c.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor.

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

NOTES.

Who can be a party to a note.

This section treats of the question as to who are competent to become parties to notes, bills or cheques as makers or drawers, acceptors, payees, indorsers and holders thereof. For, however complete and regular an instrument may be in all other respects, yet if it is not made by parties competent to contract, it is in law a mere nullity, and incapable of being enforced as to those parties, though it may still be binding and obligatory as between other parties thereto who have capacity to incur liability. Such capacity to incur liability as a party to a bill or note is co-extensive with his capacity to contract. As to who are capable of contracting, the general rule is to be found in the Indian Contract Act. (*a*) Originally, in England all bills of exchange were deemed to be strictly commercial instruments, and could be made only between merchants and other persons

(*a*) Sec. 11.

engaged in trade; but now, any person labouring under no personal or political disability may be a party to a negotiable instrument. **Sec. 26.**

In the case of foreign notes, bills and cheques, the liability of the maker or the drawer is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable. (*a*) Foreign notes.

Such disqualification may arise on the ground of the person being (1) a minor at the time of contract, or (2) one not of sound mind by reason of lunacy, imbecility, intoxication, etc., or (3) one disqualified either at Common Law (*e.g.*, alien enemies, or married women under English Law), or Statute Law (*e.g.*, a disqualified proprietor under the Court of Wards Act or an agriculturist under the Deccan Agriculturist Act). How disqualified.

It is provided by the Indian Majority Act (IX of 1875) that for all persons domiciled in British India the period of minority should last until the completion of the 18th year, or in case of such persons who have had guardians appointed to them by a court of justice or have been brought under the Court of Wards, until the completion of the 21st year; and as regards persons not so domiciled, the age of majority is to be determined by the law of their domicile. (*b*) A note made therefore by a person for whom a guardian had been appointed by the Court is void though he may have been over eighteen at the time, but below twenty-one. (*c*) The mere order of the Court appointing a guardian, even though the certificate has not issued, operates to extend the period of minority to 21 years, (*d*) and this effect of the appointment is not nullified by the fact of the subsequent discharge of the guardian by the Court. (*e*) Minor.

An agreement executed by a minor is void under the Indian Law, (*f*) though under English law it may be void or voidable according to circumstances. Contracts by way of bills of exchange or promissory notes, being generally deemed to be injurious to the interests of the minor, as they usually carry interest, it would seem that minors incur no absolute responsibility, and are incapable of binding themselves either as makers, drawers, acceptors or indorsers

(*a*) Sec 134, *post*.

(*b*) *Rollo* v. *Smith*, 1 B. L. R. (O. C. J.) 10; *Lachmi Narain* v. *Fateh Bahadur*, 25 All. 195, 202; *Kashiba Bin Narsappa* v. *Shripat Narshiv*, 19 Bom. 697.

(*c*) *Jambagathachi* v. *Rajamannar Swami*, 11 L. W. 596.

(*d*) *Shivram* v. *Krishna Bai*, 31 Bom. 80; *Mungniram* v. *Gursahai*, 17 Cal. 347 (P. C.); but see *Stephen* v. *Stephen*, 9 Cal. 901.

(*e*) *Gordhandas* v. *Harivalubhdas*, 21 Bom. 281; *Jagon Ram* v. *Mahadeo*, 36 Cal. 768; *Jambagathachi* v. *Rajamannar*, 11 L. W. 596.

(*f*) *Dattaram* v. *Vinayak*, 28 Bom. 181; *Mohori Bibi* v. *Dharmodas*, 30 Cal. 539; *Chengalroya* v. *Nainiappa*, 117 I. C. 133.

Sec. 26.

of a note or a bill. (*a*) Therefore, a negotiable instrument by a minor is void, and he is not precluded by section 120 of this Act from denying the validity of the note on the ground of want of capacity to contract even against a *bona fide* holder for value. Although the tendency of modern authorities is to liberalize the law on the subject of infancy, the doctrine accepted with regard to negotiable instruments is that an infant cannot be a party to a negotiable instrument, the reason assigned being that otherwise, should it be transferred to a *bona fide* holder for value and without notice of the infancy, the infant if bound at all would be bound for the entire sum ; and if inquiry were permitted into the consideration, the instrument would lose its character as a negotiable paper. It would seem further that, a minor is not liable even for damages on the ground that he induced the other party to enter into a transaction with him on the mis-representation that he was of age (*b*) ; nor can he be sued for money as money had and received by fraudulent mis-representation ; for it will make the minor liable for the breach of a contract merely by changing the form of action into one *ex delicto*.

Minor as acceptor.

A minor cannot bind himself by making a note or accepting a bill, but whether such instrument is binding between the other parties to it is not clear from the section itself. It is to be noticed that no mention is made in the section of acceptance by a minor or of the making of a note by him. This would suggest the view that such a bill or note would be void even as between parties other than the minor. It may be forcibly urged that the liability of the maker of a note, or the acceptor of a bill being that of a principal, while the liability of other parties is accessory (*i.e.*, their liability is that of a surety dependent upon the primary liability of the maker or acceptor), such bill or note is void even between the other parties. But, it is submitted that such a note or bill is unenforceable only against the minors, but is enforceable against any other party. For, in the case of a note made by a minor indorsed by another person, that person cannot set up the incapacity of the maker in a suit by a subsequent holder. (*c*) In like manner, where a minor accepts a bill drawn on him by a third person, he can successfully plead infancy in a suit against him, for Lord Mansfield, C. J., says : " Did any one ever hear of an infant being liable as an acceptor of a bill of exchange." (*d*) The same defence is not, however, available to the drawer or indorser

(*a*) *Ma Hnit* v. *Hashim Ebrahim*, 38 M. L. J. 353 (P. C.).

(*b*) *Mahomed Syedol* v. *Yeoh Ooi*, 43 I. A. 256 following *Leslie Ltd.* v. *Sheill*, (1914) 3 K.B. 607 ; *Kanhailal* v. *Babu*, 8 A L. J. 1058 ; *Dharasingh* v. *Gayanchand*, 16 A. L. J. 441 ; but see *Harji* v. *Abdul Halim*, 60 I. C. 267 (Lah).

(*c*) Sec. 122, *post*.

(*d*) *Williamson* v. *Watts*, (1808) 1 Camp. 552 ; *Williams* v. *Harrison*, (1689) Carth. 160.

of such a bill, for his contract is that in case of dishonour by the acceptor, he would compensate the holder for any loss or damage caused to him thereby; and such dishonour arises under section 91 when the drawee is incompetent to contract. Moreover, the indorser cannot set up the incapacity of the principal party under section 122 of the Act. The above observations apply only when the person accepting is a minor at the time of acceptance; so, where a bill was drawn during the drawee's minority, but accepted by him after attaining majority, it was held to be valid and enforceable against him. (*a*) But a bill or note given by a person after attaining majority in renewal of a bill or note executed by him during minority is void, (*b*) unless there is some new consideration. (*c*) An infant is not liable on a post-dated cheque drawn before coming of age but for which he received consideration after coming of age. (*d*)

Minor as maker.

Where, however, a joint and several promissory note is executed by a minor and an adult, the adult cannot escape liability, (*e*) though it may be otherwise if the note is made only by the minor and the money is taken by both the adult and the minor. (*f*) In the case of an ordinary pro-note made jointly by a number of persons, consideration paid to one of them is legally sufficient to support the promise of all the joint-promisors. (*g*) It has been held that, where by way of compromise in a suit, a bond for a certain sum was executed on behalf of a minor jointly with another person, without leave of the Court having been previously obtained, though the minor was not bound under the bond, the liability of the other promisor to pay the sum in question is not affected, and one of the two promisors is not entitled to plead the minority and consequent immunity of the other as a bar to the promisee's claim against him. (*h*) Similarly, although a minor may not be himself liable on a note, there is no reason why his surety should not be liable. (*i*)

Minor as payee.

Though an agreement entered into with the minor is strictly speaking, void under Indian law, as there can be no contract between persons one of whom is not an adult, still, as the section refers to contractual capacity only for the purpose of binding or being bound by

(*a*) *Stevens* v. *Jackson*, (1815) 4 Camp. 164.

(*b*) *Ramaswami* v. *Anthappa*, 16 M. L. J. 422; Re *Onslow*, Ex parte *Kibble*, (1875) 10 Ch. App. 373; *Smith* v. *King*, (1892) 2 Q. B. 543.

(*c*) *Kundan Bibi* v. *Sree Narayan*, 11 C. W. N. 135; *Karam Chand* v. *Basant Kuar*, 11 I. C. 321.

(*d*) *Hutley* v. *Peacock*, (1918) 30 T. L. R. 42.

(*e*) *Wauthier* v. *Wilson*, (1912) 28 T. L. R. 239; *Burgess* v. *Merrill*, (1812) 4 Taunt, 468; *Boyle* v. *Webster*, (1852) 17 Q. B. 950

(*f*) *Angad* v. *Srinath*, 3 I. C. 403; *Ma Hnit* v. *Hashim Ebrahim*, 38 M. L. J. 353 (P. C.)

(*g*) *Ananthakrishna* v. *Saraswati Bai*, 30 Bom. L. R. 709.

(*h*) *Jamna* v. *Vasanta*, 39 Mad. 409 (P. C.).

(*i*) *Kashiba* v. *Shripat*, 19 Bom. 697.

Sec. 26.

such instruments, it would seem that a note or a bill of exchange of which the minor is the payee is valid, and the provision that the minor may indorse impliedly recognises that a bill or note may be made in his favour, (*a*) and section 120 clearly supports the view. Whether or not the minor himself can personally receive payment is a different matter. As a general rule, payment must be made to his guardian. The question whether in an instrument the payee is the minor or his guardian is one to be determined on the language thereof. Where a promissory note was executed to "L son of the senior paternal uncle of, and guardian of minor R deducting Rs. 300 in respect of the note executed by the maker to S, guardian of the said R," it was held, that the reference to the prior promissory note in favour of the previous guardian showed that the guardian was not intended to be the real payee but the minor. (*b*)

Minor as indorser.

A minor may also indorse a bill or note payable to him or order, so far at least as to enable the indorsee to recover against the drawer, acceptor or maker, who, by undertaking to pay to the minor or his order is estopped from denying his capacity to order payment to be made to the indorsee. (*c*) The minor cannot, of course, be bound by the indorsement to pay the bill or note, (*d*) and in this respect he may be said to be a conduit pipe to convey title and liability, though not to originate it. As already remarked, this immunity of the minor is his personal privilege, and where there is no question between the infant and any other person, the drawer is liable to pay. In like manner, a minor can draw a bill of exchange, though no liability will attach to him in respect of such drawing. But if the same has been accepted by a person competent to contract, and put into circulation, all other parties to the instrument will be liable exactly in the same way, as if the drawer was a person capable of entering into binding contracts. So a bill drawn by an infant payable to his own order and indorsed by him is good against the acceptor, because the acceptance is an admission of the capacity of the drawer to draw and indorse. (*e*)

Bill, etc., for necessaries.

From the wording of the section, it would seem that, it was intended that a bill or note given by a minor even for necessaries supplied to him should not be binding on him and this has been held to

---

(*a*) *Rungarazu* v. *Maddura Basappa*, 24 M.L.J. 363; *Warwick* v. *Bruce*, (1813-1815) 2 M. & S. 205; *Holliday* v. *Atkinson*, (1826) 5 B. & C. 501; see *Muniya* v. *Perumal*, 24 M. L. J. 352; *Ulfat* v. *Gauri*, 33 All. 657; *Raghava* v. *Srinivasa*, 40 Mad. 308 (F. B.); *Ramprasad* v. *Shrinivas*, 27 Bom. L. R. 1122.

(*b*) *Alagarsami* v. *Ramanathan*, 56 M. L J. 399.

(*c*) *Grey* v. *Cooper*, (1782) 3 Doug. K. B. 65; Daniel, sec. 227.

(*d*) *Rohilkhand and Kumaun Bank* v. *Row*. 7 All. 490.

(*e*) Ind. Evidence Act, sec. 117; *Taylor* v. *Croker*, (1802) 4 Esp. 187.

Sec. 26.

be the law in England at present. (*a*) This is on the principle that negotiable instruments are mercantile instruments issued for the purpose of extending credit and, if the infant is liable at all to the indorsee, he must be liable for the entire sum stated in the instrument, and if inquiry be permitted into the consideration, the negotiable quality of the paper will be impaired. Even if the instrument executed by the minor is not negotiable, it is against the policy of the law to bind him to pay any fixed and certain sum, where the nature of the contract ought to leave open the whole inquiry as to the sufficiency of the consideration. The question as to whether in a case where the payee of a note made by an infant sues him upon it as maker, and the plea of infancy is raised, the payee may prove that it was for necessaries and that such necessaries were reasonably worth the sum specified in the paper, is not settled. The consideration set out above would point out that he may not; but "justice would seem to require that the mere negotiable form of the paper should not destroy all validity." In England, it was thought that an infant could execute a single bill for the exact sum due for necessaries. (*b*) But the better and the prevailing opinion seems to be that if at all the infant is responsible, it is not on the note or bill executed by him but on the consideration he received from the other person as necessaries. (*c*)

Lunatic.

An agreement by a lunatic stands under the Indian law on the same footing as an agreement by a minor. (*d*) A bill or note executed by such a person is void as against him even in the hands of a *bona fide* transferee; if otherwise, "it would be easy for a designing knave to obtain the paper of such a person for a large amount, the making of which it might even be a source of delight to the unfortunate lunatic." The rule in such a case may be stated as follows: while the purchaser of a promissory note is not bound to inquire into its consideration, he is affected by the status of the maker, as in the case of the minor, and he cannot enforce it against the maker though the remedies as against the other parties are unimpaired. Under the English and the American law, however, this protection of the lunatic is not absolute, for it has been held to be no defence to an action on a contract to plead that the defendant was of unsound mind, unless the plaintiff knew of the fact, or took advantage of it. (*e*) But mere weakness of mind or

(*a*) Re *Soltykoff*, Ex parte *Margrett*, (1891) 1 Q. B. 413.

(*b*) *Williams* v. *Harrison*, (1689) Carth. 160. But see notes to *Williamson* v. *Watts*, (1808) 1 Camp. 552; *Harrison* v. *Cotgreave*, (1847) 4 C.B. 562; *Roberts* v. *Bethell*, (1852) 12 C. B. 778.

(*c*) Chalmers (9th Edn.) 73; Chitty (11th Edn.) 16; Byles (19th Edn.) 47; see also *Parbhubhai* v. *Bai Lalita*, (1923) Bom. 304.

(*d*) *Machaima* v. *Usman*, 17 M. L. J. 78; *Kamola* v. *Kaura*, 41 P. R. 1912.

(*e*) See *Imperial Loan Co., Ltd.* v. *Stone*, (1892) 1. Q. B. 599, (C.A.); *Beavan* v. *M'Donell*, (1854) 9 Ex. 309.

Sec. 26.

immaturity of reason in a party to a bill or note, where there has been no fraud in the transaction, will not afford any defence to an action thereon against him. (*a*) The weakness should be such as to make a person unable to understand the transaction and form a rational judgment as to its effect on his interests. To an instrument drawn, indorsed, delivered or negotiated by a lunatic, the rule as to minors may be applied by way of analogy, though there is no specific provision in the section as in the case of minors.

Person of unsound mind.

Not only lunacy, but any condition of mind which makes a person incapable of understanding the true nature of the transaction, and of forming a rational judgment as to its effect upon his interests makes a person incapable of entering into a contract. (*b*) Such a condition of mind may be the result of drunkenness or disease or extreme old age. To be of unsound mind, it is not necessary that the individual should have no glimmering of reason ; on the other hand, mere weakness of mind or partial derangement is not sufficient to constitute unsound mind. (*c*)

Drunken person.

Drunkenness to be a good defence must be so complete as to deprive the person of understanding and reason, and when he is in such a condition, if he signs any instrument as drawer, maker, indorser or acceptor, it will certainly be void as against all the parties ; and in English and American law, (*d*) only against the parties having notice of such condition ; but if the party gets himself drunk for the purpose of entering into a contract and avoiding it in future, the fraudulent intention will deprive him of this defence. Even partial drunkenness would seem to be a defence, if it is proved that the condition was directly due to the design of the party bringing the action. (*e*)

Alien enemy.

It is universally recognised by all text-writers as a part of the Public Law of nations that a contract of an alien enemy is void "unless he came into this country *sub salvo conductu*, or to live here by the King's license." This principle not only serves the purpose of identifying the citizen thoroughly and emphatically with the policy and interests of his country, but also to prevent communications to the enemy which may be damaging in their character to the country. It follows therefore that a citizen of one country cannot legally draw a bill of exchange upon the citizen of another country at war with

(*a*) *Molton* v. *Camroux*, (1849) 4 Ex. 17.

(*b*) Ind. Contract Act, sec. 12.

(*c*) Cf. *Tirumamagal* v. *Ramaswami*, I. M. H. C. R. 214 ; *Drew* v. *Nunn*, (1879) 4 Q. B. D. 661, 669.

(*d*) *Gore* v. *Gibson*, (1845) 13 M. & W. 623 ; but see *Matthews* v. *Baxter*, (1873) L. R. 8 Ex. 132 (where the contract is treated as voidable only).

(*e*) *Johnson* v. *Medlicot*, (1734) 3 P. Wms. 130, n ; *Cooke* v. *Clayworth* (1811) 18 Ves. 12.

Sec. 26.

the first, nor can he accept a bill drawn by an alien enemy. (a) In like manner, a citizen of a country cannot indorse a bill or note to such alien enemy, nor can he be an indorsee from him. This rule does not however apply to the citizen of a friendly State, though he may be personally hostile to the Crown. (b) By the Naturalisation Act, 1870 (c) an alien is declared competent to make a contract with respect to his property; and an alien enemy residing in British India with the permission of the Governor-General in Council, may sue in the Courts, as if he were a subject of His Majesty. (d)

Married women.

By the Common Law of England, a wife's identity is completely merged in that of her husband, and a married woman cannot bind herself as the drawer, acceptor, maker or indorser of a negotiable instrument; and such instruments, if signed by her, are absolutely void; but this has been modified by the Married Women's Property Act, 1882 (45 & 46 Vict. C. 63), so that now a married woman can legally bind herself as a party to a bill or note; and her free separate property, that is to say, separate property held by her during coverture without restraint on anticipation, can be made available for the debt. But it has also been held that this limitation on liability cannot be enlarged on account of the husband's death (e) or because she has been divorced. (f) In India, so far as regards persons not being Hindus, Muhammadans, Bhuddists, Sikhs or Jains who are domiciled in India and married there, this rule of the Common Law has been displaced by the twentieth section of the Indian Succession Act which provides that "no person shall, by marriage become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried." And by the Married Women's Property Act, (g) it is further provided that she may enter into contracts, and render herself liable to the extent of her separate property, and also sue in her own name, and be sued in the same manner as if she were unmarried. The same Act exempts husbands from liability for debts incurred by wives before marriage. The above incompetency existing under the Common Law of England does not apply to cases of married women, Hindu or Mahommadan, who are under their own personal law competent to contract.

Bankrupt.

By the bankruptcy of a party, all his properties including bills of

(a) *Willison* v. *Patteson*, (1817) 7 Taunt. 438; Daniel, secs. 216 to 222; Chalmers, (9th Edn.), 75; *Ertel Bieber & Co.* v. *Rio Tinto Co.*, 1918 A.C. 260.

(b) *Johnstone* v. *Pedlar*, (1921) 2 A. C. 262.

(c) 33 & 34 Vict. C. 14, sec. 2.

(d) Civ. Pro. Code, sec. 83; see *Daimler Co.* v. *Continental Tyre and Rubber Co.* (*Great Britain*), (1916) 2 A. C. 307; also *Rodriguez* v. *Speyer Brothers*, (1919) A.C. 59.

(e) *Brown* v. *Dimblely*, (1904) 1 K. B. 28.

(f) *Barnett* v. *Howard*, (1900) 2 Q. B. 784.

(g) Act III of 1874, sec. 7.

Sec. 26.

exchange, promissory notes, and other negotiable instruments, and choses-in-action pass to his assignee, and he has no longer any power of disposition over them. Where, however, the bankrupt has no beneficial interest in the note or the bill, the title thereto does not pass to his trustee and he may indorse a bill accepted for his accommodation so as to make the acceptor liable to the indorsee. (*a*) He cannot sue on a negotiable instrument, nor is he capable of conveying any perfect title thereto by indorsement or otherwise. But if he should indorse a note made payable to himself or order, to any *bona fide* holder without notice, he would convey a good title to him against all the other parties to the instrument, which may be enforced against them; and in such a case, the maker is estopped from denying his right of transfer by having made it payable to him or order. Where a negotiable instrument is given to the bankrupt after bankruptcy, he has property in it unless the trustee chooses to interfere; until then, any person dealing with him *bona fide* and for value is protected even against the trustee. (*b*) The bankrupt too may sue on such instrument unless the trustee intervenes. (*c*)

Disqualified person.

Besides the above, there are other persons who are prohibited by the Local Law of the place from entering into contracts, and they are in the same predicament as minors, such as, a disqualified proprietor under the protection of the Court of Wards. Although such persons know what they do, yet their consent is not deemed to be valid, and they are treated as persons not *sui juris* and as having no reasonable discretion. A disqualified proprietor may be incapable under the Local Law of entering into any contract, (*d*) or may be incapable of entering into a contract so as to bind his properties. It is to the former case that the above observations are applicable, and not to the latter. (*e*) The disability continues only so long as the Court of Wards retains charge of the property and no longer. (*f*)

Corporations.

The last paragraph of the section has been introduced to prevent any possible construction of the first paragraph, as giving corporations power of making, drawing or indorsing negotiable instruments, as

(*a*) *Belcher* v. *Campbell*, (1845) 8 Q. B. 1; *Harrison* v. *Walker*, (1792) Peake 111; *Arden* v. *Watkins*, (1803) 3 East. 317; *Wallace* v. *Hardacre*, (1807) 1 Camp. 45.

(*b*) *Nicholas Edward* v. *Mary Hanlon*, 10 B. L. R. (Appx.) 23; *Braithwaite* v. *Gardiner*, (1846) 8 Q. B. 473; *Pitt* v. *Chappelow*, (1841) 8 M. & W. 616; *Drayton* v. *Dale*, (1823) 2 B. & C. 293; *Cohen* v. *Mitchell*, (1890) 25 Q. B. D. 262, 267; Cf. *Sriramulu* v. *Andalammal*, 30 Mad. 145; *Rowlandson* v. *Champion*, 17 Mad. 21; *Subbaraya* v. *Papathi*, (1918) M. W. N. 289; *Ali Mahmad* v. *Vadi Lal*, 43 Bom. 890.

(*c*) *Sriramulu* v. *Andalammal*, 30 Mad. 145; *Herbert* v. *Sayer*, (1844) 5 Q. B. 965; approved in *Jameson & Co.* v. *Brick & Stone Co., Ltd.*, (1878) 4 Q. B. D. 208; *Ram Bullab* v. *Bickraj*, 19 I. C. 88.

(*d*) See *Jagon Ram* v. *Mahadeo*, 36 Cal. 768.

(*e*) *Dhanipal* v. *Maneshar*, 28 All. 570; see *Lachmi Narain* v. *Fateh Bahadur*, 25 All. 195.

(*f*) *Birjmohun* v. *Rudra Perkash*, 17 Cal. 944.

'person' may be said to include an artificial person in the eye of law, such as, a corporation. The provision does not of itself enable a corporation to issue or indorse negotiable instruments, but its capacity is left to be regulated by the law for the time being in force with reference to corporations. A corporation, being a mere creature of law possesses only those rights which the charter of its creation confers upon it, either expressly or as incidental to its very existence. (*a*) Therefore, in order to determine whether corporations can bind themselves as parties to bills of exchange, we should see (1) whether any express power is conferred, and (2) if none be found, whether such power can be implied as necessary and incidental to the purpose for which it was created. If a corporation exceeds its power and executes an instrument, the act is *ultra vires* and a mere nullity, and not even a *bona fide* holder for value can make the corporation liable, (*b*) for, all persons dealing with a corporation are bound to inquire as to its capacity to issue such an instrument; but it has been held that a person dealing with a company is bound to look only at what may be called the outside position of the company and not its indoor management. (*c*) Therefore, where by the articles of an Association, the Directors are empowered to authorise one of themselves to draw bills of exchange for the company, and the Managing Director drew a bill without express authorisation, it was held the company was liable to a holder of the bill as the person taking the bill in due course was entitled to assume that the Managing Director had been authorised in due course of business. (*d*) But, where by the articles of Association there was no power to the managing agents to draw or make a promissory note on behalf of the company, the company was not bound on a pro-note by such agent acting for the company. In cases where express power is given in so many words, it is quite easy to determine its authority by consulting the charter or articles or memorandum of the Association; (*e*) but if such power is not expressly given, the question arises whether it can be implied from the power conferred already, or from the general character of the corporation itself. In this connection, whether the corporation has been constituted for trading purposes or not is a material factor to

(*a*) *British South Africa Co.* v. *De Beers Consolidated Mines*, (1910) 1 Ch. 354.

(*b*) *Broughton* v. *Manchester Waterworks, Co.*, (1819) 3 B. & Ald. 1; Cf. *Balfour* v. *Ernest*, (1859) 28 L. J. C. P. 170; *Shrewsbury* v. *North Staffordshire Ry.*, (1866) L. R. I. Eq. 593; see *Imperial Land Co. of Marseilles*, In re, (1878) L. R. 11 Eq. 478.

(*c*) *County of Gloucester Bank* v. *Rudry*, (1895) 1 Ch. 629.

(*d*) *Dey* v. *Pullinger Engineering Co.*, (1921) 1 K. B. 77, dissenting from *Premier Industrial Bank Ltd.* v. *Caulton Manufacturing Co.*, (1909) 1 K. B. 106. But see *Kredit Bank* v. *Schenkers*, (1927) 1 K. B. 826. (The principle does not apply to cases of bills which are forgeries.) *Mahony* v. *East Holyford Mining Co.*, (1875) L. R. 7 H. L. 869.

(*e*) *Murlidhar* v. *Supdu*, 3 Bom. 149.

Sec. 26.

consider, the word 'trade' having a much more restricted meaning than business. A non-trading corporation is not *prima facie* able to incur liability on bills. (*a*) A District Board constituted under the Madras Local Boards Act (V of 1884) has been held to be impliedly empowered to draw, indorse and accept negotiable instruments. (*b*) Where a joint stock company has been constituted for forming a *societe anonyme* abroad for the construction of railways, and the Directors were empowered by the memorandum or articles of Association to do whatever they may, from time to time, think incidental or conducive to the main object of the company, it was held that these terms empowered the Directors to issue negotiable instruments, and such company was held liable on these instruments. (*c*) Again, where a corporation or company has been formed for the purpose of carrying on trade, and the nature of its trading operations is such as to render the drawing of bills necessary for the purpose of the corporation or company, the courts will imply a power to do those acts, without which the corporation or company according to its charter or memorandum carrying on business cannot subsist. (*d*) So, a company established for the purchase of, and the carrying on of, the business of Hotel-keeper and Confectioners was held to have the power of issuing bills or notes. (*e*) It may be said generally that in the case of trading corporations the fact of incorporation for the purpose of trade would itself give capacity to draw or indorse bills of exchange; (*f*) for example, "a company like the Bank of England or East India Company is incorporated for the purpose of trade and it seems to result from the very object of their being incorporated that they should have the power to accept bills or issue promissory notes." (*g*) Applying these principles, it has been held that a company incorporated for the formation and working of a railway is not competent to draw, accept or indorse bills of exchange, (*h*) or the Directors of a cemetery company (*i*) or of a gas company (*j*) or of a salt and alkali company (*k*) or of a salvage company (*l*) or of a

Trading Corporations.

(*a*) 2 Hals. (2nd Edn.) p. 640.

(*b*) *Rangasami* v. *Sankaralingam*, 43 Mad. 816.

(*c*) *Peruvian Ry. Co.* v. *Thames and Mersey Marine Insurance Co.*, (1867) L. R. 2 Ch. App. 617.

(*d*) *Mayor of Ludlow* v. *Charlton*, (1840) 6 M. & W. 815; *South of Ireland Colliery Co.* v. *Waddle*, (1867) L. R. 4 C. P. 617; Cf. *The Shamnugger Jute Factory Co.* v. *Ram Narain*, 14 Cal. 189.

(*e*) *Choonilal Seal* v. *Spence's Hotel Co. Ltd.*, 1 B. L. R. (O. C. J.) 14. (This decision is perhaps open to doubt).

(*f*) *Edie* v. *East India Co.*, (1761) 2 Burr. 1216.

(*g*) Per Best, J. in *Broughton* v. *Manchester Waterworks Co.*, (1819) 3 B. & Ald. 1. (The case itself related to a Water Works Co., which was held not to be authorised to issue bills.).

(*h*) *Bateman* v. *Midwales Ry. Co.*, (1866) L. R. 1 C. P. 499, 505.

(*i*) *Harmer* v. *Steele*, (1849) 4 Ex. 1.

(*j*) *Bramah* v. *Roberts*, (1837) 3 Bing. N. C. 963.

(*k*) *Bult* v. *Morrell*, (1840) 12 A. and E. 745.

(*l*) *Thompson* v. *Universal Salvage Co.*, (1848) 1 Exch. 694.

company formed for importing and dealing in ox-tongues (*a*) competent to indorse bills of exchange for the purpose of the undertaking, though they had authority to contract and bargain for such purposes; for the same reason, it has been held that the Manager of a mining company cannot draw bills of exchange. (*b*) On the same principle, the Directors of a company formed for "securing valuable property etc., for the purpose of developing trade in a certain port" cannot draw bills of exchange so as to be binding on the company; (*c*) nor is a partner in a firm of auctioneers entitled to bind the firm by the acceptance of a bill of exchange, as an auctioneer is not a trader. (*d*) A note or a bill of exchange in order to be binding on a company registered under the Companies Act must be made, drawn, accepted or indorsed in the name of the company, or on its behalf, or on its account, by any person acting under its authority. (*e*) Though this is so under the section, it has been held by a long series of authorities that where Directors keep a security which according to the articles they might have power to give, the person taking it is entitled to assume they had the power; for a holder in due course cannot, as a rule, be expected to know what goes on inside the company's board room, and if the law be otherwise it would certainly strike a blow against the negotiability of company's bills, (*f*) and it has been held that unless such note or bill purports on its face to be drawn, accepted or indorsed on behalf of the company, the company is not liable with regard to third persons, (*g*) though the company is liable to the Director or Secretary drawing or accepting in such a way. (*h*) Where a corporation is a company formed under the Indian Companies Act, the power to make or indorse such instruments can be exercised if it is expressly stated in the articles of Association. (*i*) Where a promissory note was written and signed by the Secretary of a company, on a paper having at its top the name of the company, which had the usual rubber stamp of the company, it was held that the note was executed on behalf of the company, which was liable thereon. (*j*) A note or bill purporting to be made by a Municipality constituted under the Madras District

(*a*) In Re *Cunningham & Co., Ltd.*, (1887) 36 Ch. D. 532.

(*b*) *Ricketts* v. *Bennett*, (1847) 4 C. B. 695, 699; *Dickinson* v. *Valpy*, (1829) 10 B. & C. 128.

(*c*) In the matter of the *Ind. Companies' Act*, 1866 *and of the Port Canning Land, Investment Reclamation and Dock Co, Ltd.*, 7 B. L. R. (O. C. J.) 583.

(*d*) *Wheatley* v. *Smithers*, (1907) 2 K. B. 684.

(*e*) Ind. Companies Act VII of 1913, sec. 89.

(*f*) *Dey* v. *Pullinger Engineering Co.*, (1921) 1 K. B. 77; Cf. *Premier Industrial Bank, Ltd.* v. *Carlton, etc., Ltd. & Crabtree, Ltd.* (1909) 1 K. B. 106.

(*g*) In the matter of the *New Fleming, Spinning and Weaving Co.*, 3 Bom. 439: 4 Bom. 275, 277.

(*h*) In re *Nursey Spinning and Weaving Co.*, 5 Bom. 92.

(*i*) *Murlidhar* v. *Supdu*, 3 Bom. 149.

(*j*) *Poona Chitrashala Press* v. *Gajanan*, 24 Bom. L. R. 355.

Sec. 27.

Municipalities Act (Act IV of 1884), but not signed by the Chairman or Vice-chairman and a councillor as required by section 45 of the Act, has been held not to be binding on the Municipality. (*a*) But it has been held that the provision that every limited company shall have its name mentioned in all bills of exchange purporting to be signed by or on behalf of the company, is sufficiently complied with, if the name of the company upon whom a bill is drawn is correctly stated in the address without being also mentioned in the acceptance. (*b*) It is enough if the Secretary acting under the authority of the company indorses a promissory note, though the seal is irregularly fixed, especially, where the Directors subsequently ratify such error in the indorsement by their agent. (*c*) But, a hundi drawn in favour of a firm M and Sons was indorsed twice by them " M & Sons " and " M & Sons, Managing Agents, L. A. & Co., :—" it was held that the words " Managing Agents " were merely descriptive or decorative, and so the company was not liable. (*d*)

Under the Bills of Exchange Act, section 22, it is expressly provided that when a bill is payable to the order of a corporation, the indorsement of the corporation passes the property therein, though from want of capacity the corporation may not be liable as indorser. It is submitted that the same will be the law in India, though there is no specific provision in the section ; for the incapacity of one or more parties to the bill in no way diminishes the liability of the other parties thereto ; the acceptor cannot set up the incapacity of the drawer, and the drawer cannot set up that of the acceptor or of the payee ; and again, the indorser cannot question the capacity of the drawer or prior indorsers.

It is doubtful whether the principles above enunciated as to the incapacity of corporations to enter into contracts in respect of bills of exchange or notes apply in all their force to cheques issued by them for the purpose of their own business. (*e*)

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

(*a*) *Ramaswami* v. *Municipal Council of Tanjore*, 29 Mad. 360 ; *Raman Chetti* v. *Municipal Council of Kumbakonam*, 30 Mad. 290 ; *Abaji Sitaram* v. *Trimbak Municipality*, 28 Bom. 66.

(*b*) *Stracey and Co.* v. *Wallis*, (1912) 106 L. T. 541.

(*c*) *Choonilal Seal* v. *Spence's Hotel Co.*, 1 B. L. R. (O. C. J.) 14.

(*d*) *Sreelal* v *Lister Antiseptic Dressing Co.*, 52 Cal. 802.

(*e*) 2 Hals. p. 640 note (g) ; *Bateman* v. *Mid Wales Rail Co.*, (1866) L. R. 1 C. P. 499, 505.

Sec. 27.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

NOTES.

Capacity and authority.

While the previous section treated of the capacity of persons to bind themselves as parties to negotiable instruments, the present section treats of the authority or power of persons to contract on behalf of another so as to bind him. (*a*) The difference between capacity and authority may well be noted here. Capacity is the power to contract to bind oneself; but authority is the power to contract on behalf of another. Capacity to contract is the creation of law, and its presence or absence is always a question of law; but authority is derived from acts of parties, and is a question of fact to be determined in all cases. Want of capacity is incurable, while want of authority can be cured by ratification. (*b*)

Agent.

The first clause of this section simply enacts a general rule of law that a person who has power as principal to do an act, may have the same act performed by an attorney or agent. Thus, a marksman may authorise another to execute a note for him and it is valid though he does not put his mark thereto, (*c*) for the hand that holds the pen is immaterial, if in fact there be authority to sign. (*d*) An agent is defined as a person employed to do any act for another or to represent him in dealings with third persons. (*e*) Any one may become an agent as between the principal and third persons, though such person, if incapable of contracting, cannot be made responsible to his principal for his acts. As agency is a mere ministerial office; infants, or other disqualified persons may be agents for purposes of drawing, accepting or indorsing a bill on behalf of the person for whom they act. As to the manner of appointment of an agent, it may be either express, as by words spoken or written, or may be implied from the

(*a*) *Manchersha* v. *Govind Ganesh*, 32 Bom. L. R. 1035.
(*b*) Chalmers (9th Edn.) 70.
(*c*) *Balayya* v. *Subbayya*, 40 Mad. 1171.
(*d*) *Jogeshchandra* v. *Mahmmad Ibrahim*, 57 Cal. 695 (702); 2 Hals., p. 634
(*e*) Ind. Contract Act, secs. 182 and 184; *Lindus* v. *Bradwell*, (1848) 5 C. B. 583.

Sec. 27. circumstances of the case. (*a*) It may even be established that by custom of trade the 'munib' of a mercantile firm has authority to accept hundis on behalf of the firm. (*b*) Except in cases where the appointment is required by law to be in writing, no particular form of appointment is necessary to enable an agent to draw, indorse or accept bills or notes, so as to charge the principal; he may be specially appointed for the purpose or he may derive his power from some general or implied authority. In the case of an express authority to an agent, if it is in writing, it cannot be disputed by proof of contrary verbal instructions, for it proves itself when produced. Moreover, such authority will be strictly construed, (*c*) and very clear words will be required to empower an agent to indorse, accept, or draw or make a negotiable instrument. The authority given must also be strictly followed, for, if the act of the agent is not within the scope of his authority, the holder of such an instrument cannot sue the principal upon the bill or note; for the fact of the bill or note being drawn, accepted or indorsed as agent for another is itself notice to him that the agent has a limited authority. (*d*) Where the signature to the document is made "per pro," the party taking such instrument is fixed with notice of the contents of the power. (*e*) Similarly, an indorsement 'per pro' puts the indorsee on inquiry as to authority. (*f*) Where A, a manager in the service of the plaintiffs who were insurance brokers, gave cheques drawn 'per pro' the plaintiffs to the defendant in payment of his (A's) racing debts, it was held that the plaintiffs were entitled to recover the amount of the cheques from the defendant in as much as he must be taken to have had notice that the cheques were signed for purposes outside the plaintiff's business and that A had only power to draw cheques confined to that business and also as there was no evidence that the plaintiffs had held out A as having authority to draw the cheques in question. (*g*) Of course, if an agent had exceeded his authority, the principal may

(*a*) Ind. Contract Act, sec. 187.

(*b*) *Motilal* v. *Unao Commercial Bank*, 59 M. L. J. 661.

(*c*) *Bryant Powis & Bryant* v. *La Banque Du Peuple*, (1893) A. C. 170; *Jacobs* v. *Morris*, (1902) 1 Ch. 816; *Hambro* v. *Burnand* (1904) 2 K. B. 10; *Ghasiram* v. *Raja Mohun*, 6 C. L. J. 639; *Jumma Dass* v. *Eckford*, 9 Cal. 1; *Palaniappa* v. *Arunachella*, 23 M. L. J. 595; *Krishnan* v. *Raman*, 39 Mad. 918.

(*d*) *Fenn* v. *Harrisson*, (1790) 3 T. R. 757; *Davidson* v. *Stanley*, (1841) 2 M. & Gr. 721; *Atwood* v. *Munnings*, (1827) 7 B. & C. 278; *Alexander* v. *Mackenzie*, (1848) 6 C. B. 766; *Smith* v. *Prosser*, (1907) 2 K. B. 735; *Reid* v. *Rigby & Co.*, (1894) 2 Q. B. 40.

(*e*) *Sanka Krishna Murthi* v. *Bank of Burma*, 35 Mad. 692; B. of Ex. Act, sec. 25; *Stagg* v. *Elliot*, (1862) 12 C. B. N. S. 373; *Bryant Powis etc.*, v. *La Banque*, (1893) A. C. 170.

(*f*) See note (*c*).

(*g*) *Morison* v. *Kemp*. (1912) 29 T. L. R. 70; *Morison* v. *London County and Westminster Bank Ltd.*, (1914) 3 K. B. 356, appeal from (1913) W. N. 84; see also *Crumplin* v. *London Joint Stock Bank, Ltd.*, (1913) 109 L. T. 856 (cases of collection by banker on behalf of customers); *Reckitt* v. *Barnett*, (1929) A. C. 176.

refuse to pay, but it was held that section 25 of the Bills of Exchange Act does not confer a right to recover the money once it has been paid and the transaction completed; the cause of action is independent of the section.

Special agent.

There is, however, a vital distinction between general and special agency. (*a*) Where the agency is specially given, the agent is circumscribed by the limits of actual authority; (*b*) but if the agent be appointed as such generally, the principal is bound by all acts done by him in the course of the employment, provided they are within the scope of general authority, though they should be in violation of the private orders of the principal. (*c*)

Power of attorney.

Express powers-of-attorney, though containing general words or authority, are to be construed with reference to any particular object or act specified therein. (*d*) So, a power of attorney to pay, discharge and satisfy debts due from the testator, does not authorise acceptance of bills; (*e*) nor does a power to demand and receive money and use all means for the recovery thereof (and to do all other business), confer a power to indorse a bill for the principal. (*f*) In like manner, a power-of-attorney giving full powers as to management of real property, and in conclusion authorising the agent to do all lawful acts of whatsoever nature and kind, does not authorise the agent to indorse bills of exchange in the name of his principal. (*g*) Even a power-of-attorney in ample terms authorising the person to act as a mercantile agent does not empower him to draw or indorse bills and notes. (*h*) So also, general powers given to a manager of a mine, do not justify his accepting bills of exchange; (*i*) nor can a manager of a silk factory execute bills or notes for the purpose of the company under a power-of-attorney which does not specifically authorise him to do so. (*j*) But where the payee of certain notes gave a power-of-attorney to an agent to sell, indorse and assign, the authority of the

(*a*) *Venkataramana* v. *Narasinga*, 38 Mad. 134.

(*b*) *Fenn* v. *Harrison*, (1790) 3 T. R. 757; *East India Co.* v. *Hensley*, (1795) 1 Esp. 112.

(*c*) *Smethurst* v. *Taylor*, (1844) 12 M. & W. 545; *Bryant Powis and Bryant* v. *La Banque Du Peuple*, (1893) A. C. 170; *Edmunds* v. *Bushell* (1865) L. R. 1 Q. B. 97.

(*d*) *Fearn* v. *Filica*, (1844) 7 M. & Gr. 513; *Brown* v. *Byers*, (1847) 16 M. & W. 252; *Jacobs* v. *Morris*, (1901) 1 Ch. 261: (1902) 1 Ch. 816.

(*e*) *Sausone Ezekiel* v. *Addi Raja*, 2 M. H. C. R. 177, 179.

(*f*) *Hay* v. *Goldsmid*, (1804), mentioned in 1 Taunt, at 349.

(*g*) *Esdaile* v. *La Nauze*, (1835) 1 Y. & C. 394; *Davidson* v. *Stanley*, (1841) 2 M. & Gr. 721; *Satya Priya Ghoshal* v. *Gobindamohun*, 14 C. W. N. 414.

(*h*) *Pestonjee* v. *Gool Mahomed*, 7 M. H. C. R. 369; Cf. *Cunningham & Co., Ltd.*, In re, (1887) 36 Ch. D. 532.

(*i*) *Hawtayne* v. *Bourne*, (1841) 7 M. & W. 595, 599; *Dickinson* v. *Valpy*, (1829) 10 B. and C. 128, 137.

(*j*) *Ferguson* v. *Um Chand*, 33 Cal. 343, 347.

Sec. 27.

agent was upheld, though he indorsed the notes by way of security for a loan made to him. (*a*) *Mala fides* of the agent will not affect the title of a holder in due course, (*b*) as such *mala fides* "relate to the purpose of execution, and not to the power itself. The fact that the agent abuses his authority or betrays his trust (*c*) or acts in excess of his authority (*d*) cannot affect *bona fide* holders for value of bills indorsed by him, apparently in accordance with the authority. Though the indorsee's title must depend upon the authority of the indorser, it cannot be made to depend upon the purposes for which the indorser performs his act under the power." (*e*) The rule would be different if the person took the instrument with notice of the agent's *mala fides*.(*f*)

Authority implied.

The authority to an agent may be inferred from the circumstances of the case, but evidence of such implied authority must be extremely clear. This implication will be impossible in favour of a person cognisant of the express powers. (*g*) If a principal stands by and tacitly concurs in the act of the agent signing his name, he will be bound, just as if he had authorised the agent to do so. (*h*) Again, authority may be implied from the course of business or employment or from repeated recognition by the principal of the agent's authority. So, where a person had upon former occasions paid several bills accepted in his name by a third party, it was held to be evidence of authority to that party so as to render the person liable on a bill accepted by such person without authority. (*i*) This was held to be so in spite of a private remonstrance by the principal to the agent. (*j*) In the same way would an admission by the defendant of liability on another bill accepted by a third party having general authority, be evidence that another bill also was accepted under authority. (*k*) But in order to raise this presumption of the agent's authority by reason of his having similarly indorsed, or drawn on former occasions, it must be distinctly shown that the

---

(*a*) *Bank of Bengal* v. *Macleod*, 5 M. I. A. 1; *Bank of Bengal* v. *Fagan*, 5 M. I. A. 27; *Bank of Bengal* v. *Ramanathan*, 43 Cal. 527 (P. C.).

(*b*) Cf. *Jonmenjoy* v. *Watson*, (1884) 9 A. C. 561.

(*c*) *Bryant Powis, etc.*, v. *La Banque*, (1893) A. C. 170; *Slingsby* v. *District Bank, Ltd.*, (1931) 47. T. L. R. 587.

(*d*) *Brocklesby* v. *Temperance Building Society*, (1895) A. C. 173.

(*e*) Per Lord Brougham in *Bank of Bengal* v. *Fagan*, 5 M. I. A. 27, 40.

(*f*) *Muttyloll* v. *Launcelot*, 5 M. I. A. 328.

(*g*) *Pestonjee* v. *Gool Mahomed*, 7 M. H. C. R. 369.

(*h*) *Barlow* v. *Bishop*, (1801) 1 East 432; *Lord* v. *Hall*, (1849) 8 C. B. 627.

(*i*) *Barber* v. *Gingell*, (1800) 3 Esp. 60; *Prescott* v. *Flinn*, (1813) 9 Bing. 19; *Neal* v. *Erving*, (1793) 1 Esp 61; but see *Prema Bai Hema Bai* v. *T. H. Brown*, 10 B. H. C. R. 319; see also *Hogarth* v. *Wherley*, (1875) 10 C. P. 630; *Morris* v. *Bethell*, (1869) L. R. 5 C. P. 47; *Bank of Bengal* v. *Ramanadhan*, 43 Cal. 527.

(*j*) *Edmunds* v. *Bushell*, (1865) L. R. 1. Q. B. 97.

(*k*) *Llewellyn* v. *Winckworth*, (1845) 13 M. & W. 598.

principal knew or had the means of knowing that fact; (*a*) it must further appear that the party taking the bill or note took it on the faith of those prior transactions. (*b*) Such authority is not, however, to be implied from a mere general authority to transact business, and to receive and discharge debts. In this respect, it is an exception to the general rule that an agent having authority to carry on business has authority to do every lawful thing necessary for the purpose. (*c*)

Sec. 27.

The second paragraph, of the section speaks only of accepting or indorsing bills of exchange. The non-mention of making a note or drawing a bill is immaterial, as the maker's liability is analogous to that of an acceptor and that of the drawer's, much the same as an indorser's liability.

Authority—construction of.

Authority to bind the principal of a party to a negotiable instrument is authority to bind him separately and not as co-partner with another. So strict is the construction of the authority given to agents, that the authority to draw a bill is not of itself an authority to indorse (*d*) or to accept one. (*e*) Authority to indorse does not imply authority to accept a bill. The authority of an agent to receive payment by getting the acceptance of the debtor to a bill drawn in blank, does not carry with it an authority to him to draw the bill payable to his own order. (*f*) Authority to draw, indorse, or accept and negotiate on behalf of a Company does not empower the agent to draw on the Company with a view that the proceeds of such drawing may be placed to his general account, so that from such account general advances may be made to the Company; for, if the agent failed, the company would lose the benefit of the bill (*g*); nor does such authority authorise him to draw promissory notes in favour of his own firm (*h*) or for the accommodation of another; though such a power may be inferred from a power to sign promissory notes with others jointly. (*i*)

Principal, when bound.

It is a general principle of commercial law that no evidence is admissible to charge any person as a principal party to an instru-

(*a*) *Davidson* v. *Stanley*, (1841) 2 M. & Gr. 721.

(*b*) *Cash* v. *Taylor*, (1830) 8 L. J. (O. S.) K. B. 262.

(*c*) *Murray* v. *East India Co.*, (1821) 5 B. & Ald. 204; *Hogg* v. *Snaith*, (1808) 1 Taunt, 347; *Esdaile* v. *La Nauze*, (1835) 1 Y. & C. 394.

(*d*) Cf. *Lewis* v. *Reilly*, (1841) 1 Q. B. 349.

(*e*) *Robinson* v. *Yarrow*, (1817) 7 Taunt. 455; *Murray* v. *East India Co.*, (1821) 5 B. & Ald. 204; *Attwood* v. *Munnings*, (1827) 7 B. & C. 278; Cf. *Prescott* v. *Flinn*, (1813) 9 Bing. 19.

(*f*) *Hogarth* v. *Wherley*, (1875) L. R. 10 C. P. 630.

(*g*) *The Oriental Bank Corporation, Ld.* v. *The Baree Tea Co., Ld.*, 9 Cal. 880.

(*h*) *Sanka Krishnamurthi* v. *The Bank of Burma*, 35 Mad. 692.

(*i*) *Bank of Rangoon* v. *Somasundaram Chetty*, 26 I. C. 253.

Sec. 27. ment, unless his name is not merely in some way disclosed on the instrument itself but it is disclosed in such a way that on any fair interpretation of the instrument, his name is the name really liable on the bill. (*a*) Accordingly it has been held that on hundis drawn by a person describing himself as the Superintendent of the private treasury of H. E. Maharajah, K. P, without disclosing that any other person is liable as principal, the drawer was personally liable and the Maharajah could not be liable on the instrument. (*b*) So also, where the drawer adds after his signature an epithet showing him to be the Managing Proprietor of a particular firm, it is he and not the firm that is party to the instrument, and therefore liable under it. (*c*) In this respect, the law as to negotiable instruments is different from the rule of law applicable to simple contracts in writing which allows parol evidence to be given to charge an undisclosed principal. The reason of this peculiar rule applicable to bills and notes is that, as such paper is made for the purpose of being transferred to every successive holder with a strong claim against the parties on it, it must indicate on its face the persons who are bound for its payment. This proposition is made clear by the use of the words 'in his name' (*i.e.*, the principal's name) in the first clause of the section ; (*d*) the effect of it being that a principal can be made liable through his agent on a negotiable instrument, only when the agent acts as here prescribed in his (the principal's) name, that is to say, when he as agent executes it. This point has been clearly provided for in the English Bills of Exchange Act, section 23, where it is laid down that no person is liable as drawer, indorser, or acceptor who has not signed it as such. In the absence of such a provision in the Indian Act, an argument is advanced that though the instrument might be signed by a person in his own name, evidence ought to be admitted to show that he was signing as agent of another. But, the argument was not accepted by the Privy Council in *Janki Das* v. *Kishan Pershad* (*e*) and it was held, that in an action on a bill of exchange or promissory note a person whose name properly appears as party to the instrument cannot either by way of claim or defence show that the signatory was in reality acting for an undisclosed principal. (*f*) It has been further held that the general provisions of the Indian Contract

---

(*a*) *Janki Das* v. *Kishan Pershad*, 46 Cal. 663 (P. C.) ; the observation in a previous edition that the name should be disclosed in some way has been held to be an inadequate statement of the law by the Judicial Committee.

(*b*) *Ibid.*

(*c*) *Sitaram Krishna* v. *Chimandas Fatehchand*, 52 Bom. 640.

(*d*) *Subba Narayanan* v. *Ramasami*, 30 Mad. 88, 91 (F. B.).

(*e*) 46 Cal. 663 (P. C.).

(*f*) *Phoenix Trading Co.* v. *Diwanchand*, (1929) Sind, 172; *Bankidas* v. *Tanabai*, 118 I. C. 673; *Sitaram* v. *Chimandas*, 52 Bom. 640.

Sec. 27.

Act, 1872, as to the rights and liabilites of undisclosed principals were not intended to alter the well-established rule as to negotiable instruments which continue to be governed by the Law Merchant based on general mercantile usage ; (*a*) and that having regard to the fact that such instruments pass constantly from hand to hand, it would be dangerous in the extreme to introduce any doctrine which permitted such evidence. (*b*) Thus, the rule in India is in accordance with the English law on the subject, (*c*) and it applies even in cases where it can be proved that the payee knew of the agency, when the bill was drawn, (*d*) and it was understood that the principal and not the agent was to be bound ; for such evidence, if admitted, would vary the terms of the written contract. (*e*) It has been doubted, whether a note executed by an agent by singing the name of the principal merely, without adding anything to indicate that the signature was by an agent, would be binding on the principal. Though there are grave objections to such a mode of execution, it is submitted that it is valid and the agent's authority may be shown by parol. Thus, where one person subscribed a policy of insurance with the name of another, proof of his having done it in many instances is sufficient to charge him whose name is so subscribed without producing any power-of-attorney ; (*f*) so also it was held that evidence that the son of the defendant had, in three or four instances, signed bills of exchange for his father, is sufficient in an action against the father on a guaranty, to warrant the reading of an instrument purporting to be a guaranty by the father in the handwriting of the son. (*g*) It is said that if the name of the principal is signed by an agent in the presence of the principal and by his direction, this will be sufficient to bind the principal though there be nothing on the face of the note to show the agency. There may be also cases in which the agent will not be personally liable on the bill or note, though there is nothing on the face of the instrument to indicate the agency. Thus, if an agent in the execution of his agency incurs a debt on behalf of his principal and draws upon his principal a bill for the amount thereof, in favour of the creditor, it is submitted that the agent will not be held liable on the bill, if it was the understanding of the parties that he acted as agent merely, and did not

(*a*) *Subba Narayanan* v. *Ramaswami*, 30 Mad. 88, 91 (F.B.).

(*b*) *Sitaram* v. *Chimandas*, 52 Bom. 640.

(*c*) *Cf.* B. of Ex. Act, sec. 23 ; In re *Mile's claim*, (1874) L. R. 9 Ch. App. 635, per Lord Justice James.

(*d*) *Edmunds* v. *Bushell*, (1865) L. R. 1 Q. B. 97 ; *Lindus* v. *Bradwell*, (1848) 5 C. B. 583; *Yinuganti* v. *Venkatanarasimha*, (1913) M. W. N. 1005.

(*e*) Cf. *Leadbitter* v. *Farrow*, (1816) 5 M. & S. 345 ; Ex parte *Reyner*, (1868) 17 W. R. 64 ; *Wilson* v. *Barthrop*, (1837) 2 M. &. W. 863.

(*f*) *Neal* v. *Erving*, (1793) 1 Esp. 61.

(*g*) *Watkins* v. *Vince*, (1818) 2 Stark 368 ; *Barber* v. *Gingell*, (1800) 3 Esp. 60.

Sec. 27.

intend to make the debt his own, the chief object of drawing the bill being to certify to the principal the amount due to the creditor. (*a*) It is not absolutely necessary that the principal's particular name should be used so as to bind him, but he may by adoption use that of the agent or any other name, (*b*) or his agent may by his authority use his, or any other name for the name of the principal. In such cases, the adopted name is in law actually equivalent to the actual name of the party. (*c*) There is in Southern India a custom among Nattukottai Chetties who trade under names made up of a series of initials to indicate firm transactions by prefixing the firm's initials to the name of the signatory. (*d*)

If two or more persons are authorised to bind their principal by their conjoint action, all must sign, as it is their joint action and not their separate action which the principal engages to be bound by. So, if at least four of the Directors of a Company are essential to act for it, and three only authorise an agent to draw bills in its name, they will not be binding on the Company. (*e*)

Partnership.

There is a class of cases where a person is bound as a party to a negotiable instrument, though he has not signed it as such, as where a person is a partner in a firm, and the name of the firm appears on the bill or note. Unless one partner signs as such, or the name of the firm appears on the face of the bill, the firm is not liable, though the bill should be drawn for its benefit. (*f*) For the signature of the firm is deemed to be the signature of all the persons who are partners in the firm whether working, dormant or secret and also those who, holding themselves out as partners, are liable as such to a third party. (*g*) This rule is based upon the principle that each partner is entrusted by his co-partners with a general authority to do any act necessary for, or usually done in, carrying on the business of such a partnership. (*h*) "The proposition of law applicable to these facts is well known and indisputable. Every one of the partners in a

(*a*) 1 Parson, 91, 94.

(*b*) *Alliance Bank* v. *Kearsley*, (1871) L. R. 6 C. P 433, 438; *Edmunds* v. *Bushell*, (1865) L. R. 1 Q. B. 97.

(*c*) *Wilde* v. *Keep*, (1833) 6 C. & P. 235; *Forman* v. *Jacob*, (1815) 1 Stark 47; *Lindus* v. *Bradwell*, (1848) 5 C. B. 583, 591; *Trueman* v. *Loder*, (1840) 11 A. & E 594.

(*d*) *Muthar* v. *Kadir*, 28 Mad. 544; *Mungumall Jessa* v. *A. L. V. R. C. T. Firm*, 4 M. L. T. 309; *Ghulamsa* v. *Visvanatham*, (1917) M. W. N. 344; *Palaniappa* v. *Shunmugam*, 41 Mad. 815. See *Tourret* v. *Cripps*, (1879) 48 L. J. Ch. 567; (heading on note-paper considered a signature).

(*e*) *Ducarry* v. *Gill*. (1830) 4 C. & P. 121; In re *Birmingham Banking Co.*, (1868) L. R. 3 Ch. App. 651; *Agra and Masterman Bank*, Ex parte, (1871) L. R. 6 Ch. App. 206.

(*f*) *Somasundaram* v. *Krishnamurthi*, 17 M. L. J. 126; *Thaith Ottathil* v. *Purushotham*, 9 M. L. T. 120; *Nicholson* v. *Ricketts*, (1860) 29 L. J. Q. B. 55; *Yorkshire Banking Co.* v. *Beatson*, (1880) 5 C. P. D. 109; *Furze* v. *Sharwood*, (1842) 2 Q. B. 388; but see *Nataraja* v. *Ayyasami*, 32 M. L. J. 354; see Appendix B.

(*g*) Ind. Contract Act, secs. 245, 246.

(*h*) Ind. Contract Act, sec. 251.

Sec. 27.

A firm mercantile.

mercantile firm of ordinary trading partnership is liable upon a bill drawn by a partner in the recognised trading name of the firm for a transaction incidental to the business of the firm, although his name does not appear on the face of the instrument, and although he be a sleeping and secret partner." (*a*)

So much so, when a man in partnership with others under a certain style, with intent to defraud and without lawful authority or excuse, accepted a bill of exchange in the style of the firm, thereby accepting the bill in the name of his partners, he was convicted of forgery under the Forgery Act, of having accepted it in the name of another person within the meaning thereof. (*b*) This well-established principle is supposed to have been over-ruled by the Judicial committee in the case of *Karmali Abdulla* v. *Vora Karimji*. (*c*) In that case however, the action was one for accounts against the partners and the dispute related to the amounts covered by hundis drawn by one of the partners on the plaintiff ; the suit was not based on the hundis and in fact, the suit could not be based on them, as they were properly accepted and paid for at their due dates, and all rights of action thereon were extinguished (see section 90). The suit being one for refund of amounts paid by plaintiff to meet the acceptance by him for the accommodation of the drawer or drawers, the question really turned on the construction of the agreement between the two partners and the plaintiff. It is hardly correct to say therefore that the case was an authority for the proposition that on a bill drawn by one of the partners not in the firm's name, the other partner also is liable. In this view, it is submitted that the Madras cases (*d*) noted below are wrong. But, it is permissible to give a decree against all partners on the contract of loan though not on the note, and for that purpose an amendment may also be allowed. (*e*)

'Non-trading firms.'

In the case of partnerships which are not of a mercantile character, there is no such implied authority as mentioned above. Thus, in the case of a mining company, (*f*) or a farming company, (*g*)

(*a*) Per Phillimore, J. in *Bunarsee* v. *Gholam*, 13 M. I. A. 358, 363 ; *Motilal* v. *The Unao Commercial Bank*, 59 M. L. J. 661 (P. C.) ; *Sobhomal* v. *Pohumal*, 13 I. C. 255 ; *Bank of Australasia* v. *Breillat*, (1847) 6 Moo. P. C. 152 ; *Fox* v. *Clifton*, (1830) 6 Bing. 776, 795, per Tindal, C. J ; *Haji Noor Mohammad* v. *Mucleod*, 9 Bom. L. R. 274.

(*b*) *Rex* v. *Holden*, (1912) 1 K. B. 483.

(*c*) 39 Bom. 261.

(*d*) *Nataraja* v. *Ayyasami*, 32 M. L. J. 354 ; *Shunmuganatha* v. *Srinivasa*, 40 Mad. 727.

(*e*) *Venkatachalapati* v. *Ramakrishnayya*, (1930) Mad. 168.

(*f*) *Brown* v. *Byers*, (1847) 16 L. J. Ex. 112 ; *Dickinson* v. *Valpy*, (1829) 10 B. & C. 128 ; *Ricketts* v. *Bennett*, (1847) 4 C. B. 699 ; In re *Cunningham & Co.*, (1887) 36 Ch. D. 532.

(*g*) *Greenslade* v. *Dower*, (1823) 7 B. & C. 635.

Sec. 27. or a firm of attorneys, (*a*) or even a firm of carriers, (*b*) a partner cannot bind the firm by a bill of exchange, or a promissory note, unless he has express authority to make it, or accept it. An agricultural partnership, (*c*) a commission agency, (*d*) a firm of auctioneers, (*e*) a gas company (*f*) a salt and abkari company, (*g*) and a salvage company, (*h*) fall under the same category. But a banking company is a trading partnership. (*i*)

A partner in a trading firm may indorse a bill or note in the name of the firm, and if it gets into the hands of a holder in due course, the presumption of the authority becomes absolute. Then it becomes immaterial whether the instrument was given for partnership purposes or not; for "it is a strange and novel doctrine to hold it necessary for a person receiving a bill of exchange indorsed by one of several partners to know whether the others assented to such indorsement or not" (*j*). Where one of the partners indorsed the name of the firm on fictitious bills, and the proceeds were applied to partnership purposes, the firm was held liable. (*k*) Even when the implied authority of a partner has been expressly cancelled, the firm will nevertheless be liable on the hundis to a holder in due course, unless it is established that he had knowledge of such cancellation. (*l*) If the indorsee or the payee took it with notice that the indorsing partner did so in fraud of his co-partners, the property therein does not pass to him, and the other partners will not be liable (*m*) even to the extent to which the firm was benefited. (*n*) Even in a case where two partners each without knowledge of the other signed two separate bills to satisfy the same debt, it was held that the firm was liable on both the bills in the hands of *bona fide* holders. (*o*) The authority to indorse for the firm continues even after dissolution, in case the dissolution is by the death of the partner but not in other cases; the reason is that in case

---

(*a*) *Hedley* v. *Bainbridge*, (1842) 3 Q. B. 316; Ind. Contract Act, sec. 251, Illus. (b).

(*b*) *Premabai* v. *T. H. Brown*, 10 Bom. H. C. R. 319.

(*c*) *Kimbro* v. *Bullit*, (1859) 20 Howard 256 (Amer.).

(*d*) *Yales* v. *Dalton*, (1858) 28 L. J. Ex. 69. But see *Atmaram* v. *Natandas* (1930) Sind 4.

(*e*) *Wheatley* v *Smithers*, (1907) 2 K. B. 684.

(*f*) *Bramah* v. *Roberts*, (1837) 3 Bing. N. C. 963.

(*g*) Cf. *Bult* v. *Morrell*, (1840) 12 A. & E. 745.

(*h*) *Thompson* v. *Universal Salvage Co.*, (1848) 1 Ex. 694.

(*i*) *Bank of Australasia* v. *Breillat*, (1847) 6 Moo. P. C. 152, 194.

(*j*) Per Lord Ellenborough, C. J. in *Swan* v. *Steele*, (1806) 7 East 210; *Sanka Krishnamurthi* v. *Bank of Burma*, 35 Mad. 692, 696.

(*k*) *Thickness* v. *Bromilow*, (1832) 2 C. & J. 425.

(*l*) *Motilal* v. *The Unao Commercial Bank*, 59 M. L. J. 661, (P.C.).

(*m*) *Sobhomal* v. *Pohumal*, 13 I.C. 255; *Levieson* v. *Lane*, (1862) 32 L. J. C. P. 10; *Thaith Ottathil* v. *Purushotham*, 9 M. L. T. 120.

(*n*) *Ellston* v. *Deacon*, (1866) L. R. 2 C. P. 20.

(*o*) *Davison* v. *Robertson*, (1815) 3 Dowl. H. L. 218.

of dissolution by act of parties, the authority of one partner to act for another is gone; while in the other case, the bill or note vests in the survivor who is only under a liability to account therefor as partnership assets. (*a*) Thus, though a partner of a trading firm can acknowledge a barred debt, (*b*) if, however, the partnership is at an end for trading purposes, such power cannot be presumed. (*c*)

Joint Hindu family trade.

The manager of a Hindu family, represents the family, in transactions of the family with outsiders and has implied authority to contract debts on behalf of the estate. (*d*) Where a portion of the family property consists of trade or other business, the power of the manager to carry on the business necessarily implies a power to pledge the credit of the family for the ordinary and usual purposes of such business, (*e*) and the family will be bound by all the rules and laws applicable to that trade or business. In the case of a joint family trading firm, the drawing of a bill of exchange or the giving of a promissory note is a necessary incident of the carrying on of that trade, and that fact alone will justify the manager in executing such instruments and raising money on them. The lender need not, in such cases, make any inquiries as to the necessity of the particulur transaction. The minor members of the family partnership are equally liable to the extent of their share, (*f*) even though the manager may have drawn the bill or note unconnected with the business of the family or in fraud thereof. (*g*) The *Karta* of a joint family cannot impose on a minor member of it, the risk and liability of a new business started by himself and the other adult members. (*h*) This rule as to the liability of the minor's share in joint family business for the trade debts, cannot also be applied to a case where the minor is the sole owner of the business which is managed by a guardian on his behalf. Though it has been held that a natural guardian may properly carry on a family business belonging to the minor, (*i*) the rule obtaining in England in such cases, has been applied; that is, that when the legal representative or

---

(*a*) Daniel sec. 370 (a) & (b).

(*b*) See *Dalsukhram* v. *Kalidas*, 26 Bom. 42; *Gadu Bibi* v. *Parsotam*, 10 All. 418.

(*c*) *Premji* v. *Dossa*, 10 Bom. 358.

(*d*) *Atmaram* v. *Banku*, (1930) Lah. 561; *Kishan Prasad* v. *Har Narain*, 33 All. 272; *Sheo Shanker* v. *Jaddo*, 36 All. 383; *Ramnath* v. *Ram Rao*, 46 Bom. 358.

(*e*) *Ramlal* v. *Lakhmichand*, 1 B. H. C. R. (App.) 51; *Sakrabhai* v. *Magan Lal*, 26 Bom. 206; *Bemola* v. *Mohun*, 5 Cal. 792; *Krishnasami* v. *Rangasami*, 7 Mad. 112.

(*f*) *Raghunathji* v. *Bank of Bombay*, 34 Bom. 72; *Sanka Krishnamurthi* v. *Bank of Burma*, 35 Mad. 692; Ind. Contract Act, sec. 247; *Subbaraya* v. *Thangavelu*, 45 M. L. J. 44.

(*g*) *Ibid.* See *Ganpat* v. *Munni Lal*, 34 All. 135.

(*h*) *Sanyasi* v. *Krishnadan*, 49 Cal. 560; *Tammireddi* v. *Gangireddi*, 45 Mad. 281 (P.C.).

(*i*) *Joy Kisto* v. *Nittyanund*, 3 Cal. 738.

Sec. 27.

a guardian is allowed to carry on the business, the guardian or legal representative and not the minor or the beneficiary is to be personally liable on contracts, and the creditors have no right of direct recourse against the minor or his estate; but as the guardian is entitled to indemnity out of the assets embarked on the business, the creditors are entitled to proceed only against such assets. (*a*) But it is open to doubt whether the Indian procedure permits of such a course. It has been held that persons who have advanced moneys to an executor are not entitled to proceed against the estate, though admittedly executors have a right of indemnity against the estate; (*b*) and it has also been held that where a trustee of a temple or the manager of a charity borrows money for purposes of the trust by executing a promissory note, the creditor is not entitled to a decree charging the amount due against the trust property. (*c*) Where a Hindu widow succeeds to the trade or business of her husband, and incurs debts on the credit of such business, such debts are recoverable out of such assets when it comes into the hands of the reversioner, even though there is no specific charge created. (*d*)

In the firm's name.

As already stated, to hold the firm liable, the name of the firm must appear as a party on the instrument and its name should be clearly stated on the face or the back of the instrument, so that the responsibility is made plain and can instantly be recognised as the document passes from hand to hand. (*e*) Thus, where a note is executed by a member of a firm in his own name, no decree can be passed against his partner also, though the debt might have been borrowed for partnership purposes. (*f*) The signature of the firm should also be written by the co-partner in the very terms of the style of the firm; (*g*) but if the partners had authorised the change of the style, the altered style becomes the firm's

---

(*a*) *Sanka Krishnamurthi* v. *The Bank of Burma*, 35 Mad. 692, 698; Cf. *Durasami* v. *Muthial*, 31 Mad. 458; *Parbhubai* v. *Bai Lalita*, (1923) Bom. 304.

(*b*) *Debendra* v. *Hemchandra*, 31 Cal. 253; *Ammalu* v. *Namagiri*, 33 M. L. J. 631. See also *Krishna* v. *Nagamani*, 39 Mad. 915 (though the actual decision is not based on the right of indemnity, that is the only ground on which the decision can be sustained); *Meenakshisundaram* v. *Ranga*, 35 L. W. 397.

(*c*) *Swaminatha* v. *Srinivasa*, 32 M, L. J. 259; *Palaniappa* v. *Shanmugam*. 41 Mad. 815.

(*d*) *Sakrabhai* v. *Magan Lal*, 26 Bom. 206; *South Indian Export Co., Ltd.* v. *Subbier*, 28 M. L. J. 696; *Tanikachala* v. *Alamelu Ammal*, 16 M. L. T. 26; such decree may be passed if the suit is framed alternatively on the original cause of action.

(*e*) *Janki* v. *Kishan*, 46 Cal. 663, 668 (P. C.); *Radhakisen* v. *Mancherdas*, 15 N. L. J. 5.

(*f*) *Ibid*; but see 53 M. L. J. (N. R. C.) 69.

(*g*) *Faith* v. *Richmond*, (1840) 11 A. & E. 339; *Kirk* v. *Blurton*, (1841) 9 M. & W. 284; Byles (19th Edn.) 67, 68.

Sec. 27.

style, and the bill is binding on them. (*a*) If the variation from the firm's name is immaterial, (*b*) or if it was un-intentional or caused by accidental mis-spelling, (*c*) the liability of the other partners will not be affected. It has also been held, that the firm's seal is not quite necessary, but the name of the firm must be disclosed in such a way, that on any fair interpretation of the instrument, it must be clear that the person executing the instrument "acted for the firm". It is not the rule in India that the agency must be disclosed in the signature, and cannot be shown effectively in any other way. Thus, where in a note it is stated to be executed by a Company and another, and proceeds to state that the consideration was received on account of necessity of the Company, it was held, on a fair interpretation of the instrument that the name of the firm was sufficiently disclosed, though in the signature the name of the firm was not mentioned. (*d*) But, if the name of the firm is disclosed in the signature, it is fairly conclusive that the person signing the instrument acts for the firm and not for himself. In determining the question, whether the style of the firm is used or not is a material consideration. When it is varied, the firm is not liable. (*e*) Where a signature is common to an individual and a firm of which he is a member, a *bona fide* holder for value, without notice as to whose paper it is, of a bill with such signature attached, has no option to sue either the individual or the firm. There is a presumption that the bill is of the firm, at least where the individual has no other business, and is binding on it. The presumption is rebuttable. (*f*)

'Nature' of liability.

The nature of the liability of partners is joint, and not joint and several, and no one partner can bind the firm by a joint and several note without the consent of the other partners. (*g*) So, if a partner executes a joint and several note, without the consent of the other partners, he alone will be liable separately, (*h*) while his co-partners will be liable only jointly along with him. (*i*)

Nominal partner.

A mere nominal or ostensible partner is as much bound by the negotiable paper or other engagements of the firm as an active partner, for if he suffers himself to be held out to the

(*a*) *Williamson* v. *Johnson*, (1823) 1 B. & C. 146.

(*b*) *Norton* v. *Seymour*, (1847) 3 C. B. 792; *Forbes* v. *Marshall*, (1855) 11 Ex. 166.

(*c*) *Leonard* v. *Wilson*, (1834) 2 Cr. & M. 589.

(*d*) *Indur Pattabirama* v. *Kamisetti*, 55 M. L. J. 574; *Jogeschandra* v. *Mahammad*, 57 Cal. 695, 702; *Atmaram* v. *Natandas*, (1930) Sind. 4.

(*e*) Byles (19th Edn.) 67, 68; see Appendix. B.

(*f*) *The Yorkshire Banking Co.* v. *Beatson*, (1880) 5 C. P. D. 109.

(*g*) *Lakshmi* v. *Vishnu Ram*, 24 Bom. 77.

(*h*) *Elliot* v. *Davis*, (1800) 2 Bos & P. 338.

(*i*) *Maclae* v. *Sutherland*, (1854) 3 E & B. 1; *Perring* v. *Hone*, (1826) 4 Bing. 28.

Sec. 27.

world as a member, he authorises third persons to regard him as a contracting party. (*a*) On the same principle, it is incumbent on a retiring partner to acquaint all parties having business connections with the firm that he is no longer a partner of the firm. For, customers and dealers with the firm have a right to infer his continuance and to regard each member as the agent of all. A notice of retirement in the Gazette or some public journal is not by itself enough, unless it be shown that the dealer was in the habit of reading the Gazette or journal; though as to strangers to the firm, *i.e.*, persons who are not its customers and who knew of its existence only by general reputation, this would be held to be sufficient notice. No such notice is necessary, however, in cases where the dissolution of the partnership takes place by the death or bankruptcy of one of the partners to exonerate the estate of such person from liability for acts of the co-partners. (*b*)

As we have already seen, a principal is bound by all acts done by a person appointed as his general agent in the course of employment within the scope of the authority given him. But no act of the agent which exceeds the limit of authority given him by his principal will bind him, unless the principal's representations or acts give to the agent the appearance of an authority larger than what the agent actually possesses. (*c*)

So, a person taking a note from a partner of a non-trading firm ought to satisfy himself as to the extent of the partner's authority, and if the note which he takes from such partner is for a sum larger than that for which the latter was authorised to make notes, the payee cannot recover against the firm even to the extent of his authorization, for the contract is not capable of division. (*d*) An agent who signs a bill for his principal without authority may not be liable on the instrument itself, but he can be sued by the holder in an action for falsely representing that he had authority. (*e*) For an agent who enters into a contract as agent impliedly represents that he has authority, and he and his executors are liable for damages arising out of any contract entered into with him or any third person in consequence of such implied representation of authority, if eventually it turns out that he had no authority as a

---

(*a*) *Daji Abaji* v. *Govind*, 10 Bom. L. R. 811.

(*b*) Daniel, sec. 369 (a), (b).

(*c*) *Fearn* v. *Filica*, (1844) 7 M & Gr. 513; *Morison* v. *London County and Westminster Bank*, (1914) 3 K. B. 356.

(*d*) *Premabhai* v. *T. H. Brown*, 10 B. H. C. R. 319.

(*e*) *West London Bank* v. *Kitson*, (1884) 13 Q. B. D. 360; *Polhill* v. *Walter*, (1832) 8 B & Ad. 114; *Edwards* v. *Porter*, (1923) 1 K. B. 268.

fact. (*a*) It was once thought that this liability of the agent is founded on the ground of fraud in law. Hence it was held that he would incur no liability where he *bona fide* believed his representation to be true, for example, where he had acted upon a power-of-attorney which he believed to be genuine though it turned out to be a forged one. (*b*) It is no longer the correct view, and the true ground of liability is based upon an implied warranty by the agent that he had authority quite independent of any question of fraud in law. (*c*)

Ratification.

An act of an agent in making, drawing, accepting or indorsing a bill or note without the express authority of his principal may be ratified by the latter so as to make himself liable on the bill or note, and such subsequent recognition of the agent's act is equivalent to a previous authority, and operates on the contract in the same manner as if the authority to make the contract had originally existed. (*d*) The power to ratify therefore pre-supposes the power to contract on the part of the party ratifying, and the act ratified must be one ostensibly done on behalf of the person who subsequently ratifies it; (*e*) and so where a person acted as agent for a Company not in existence at the time, it was held that there could be no subsequent ratification by the Company so as to free the alleged agent from liability. (*f*) Such ratification to be valid must be founded on a full knowledge of facts, (*g*) and cannot be made to the prejudice of any third person's right or interest or so as to subject him to damages. (*h*) Moreover, as ratification is an integral act, a party cannot ratify a contract, so far as it is to his interest, and repudiate it as to the rest. (*i*) The ratification may be either express, or implied from the conduct of the person on whose behalf the act is said to be done. (*j*) Retaining the proceeds of the note, or trying to enforce a note taken in his name by an assumed agent is an example of ratification by implication; but mere silence alone is not sufficient to constitute ratification, though it may be an important piece of evidence, when coupled with other circumstances

---

(*a*) *Collen* v. *Wright*, (1857) 7 E. & B. 301.

(*b*) *Polhill* v. *Walter*, (1832) 3 B & Ad. 114.

(*c*) *Starkey* v. *Bank of England*, (1903) A. C. 114; *Bank of England* v. *Cutler*, (1908) 2 K. B. 208.

(*d*) Ind. Contract Act, secs. 196 to 200; *Morison* v. *London County and Westminster Bank*, (1914) 3 K. B. 356.

(*e*) Ind. Contract Act, sec. 196; *Ainsworth* v. *Creeke*, (1869) L. R. 4 C. P. 476; *Bird* v. *Brown*, (1850) 4 Ex. 786; *Bhagwat* v. *Debi*, 35 Cal. 420, 429 (P. C.); *Ghasiram* v. *Rajamohan*, 6 C. L. J. 639; *Shiddheswar* v. *Ramachandra*, 6 Bom. 463, 466.

(*f*) *Kelner* v. *Baxter*, (1866) L. R. 2 C. P. 174; *Empress Engineering Co.*, In re, 16 Ch. D. 125. *Keighley etc., & Co.*, v. *Durant & Co.*, (1901) A. C. 240.

(*g*) Ind. Contract Act, sec. 198.

(*h*) *Ibid.*, sec. 200.

(*i*) *Ibid.*

(*j*) *Ibid.*, sec. 197.

Sec. 27.

in deciding the question of ratification. Thus, where the authority of an agent to raise a loan is not sufficiently established, but it is proved that the sum borrowed, or a portion thereof, has been applied for the benefit of the principal with his knowledge, the creditor is certainly entitled to be reimbursed by the principal to the extent to which he has been benefited. (*a*) But, it may be, if the creditor agreed to rely exclusively upon a specific fund for payment, no personal liability will be created. (*b*)

Authority determined.

General authority to an agent is supposed to continue until notice is given of its determination. As to when such agency terminates, see sections 201 to 210 of the Indian Contract Act. If a clerk or agent authorised to draw, accept, or indorse bills or notes is discharged from service, his employer will be bound by such clerk's or agent's signature made after determination of his authority, unless notice is given of his discharge. A bill drawn by an agent after the death of his principal, *bona fide* and without knowledge of death, is valid. (*c*) Where a man assumes to act as agent when he is really not so by virtue of a previous revocation, or by the death of his principal or by any other cause, un-communicated and unknown to the agent, that will not relieve him from personal liability on the ground that there is no fault in the agent, (*d*) and in cases where he has led the other party to believe in his continuing authority he is liable, though it may be said, that his conduct has not been in any way wrong or negligent.(*e*) A different rule applies to special and limited agencies, for their authority terminates by their own limitations, and the agent is no longer capable of binding his principal by any act of his. As an exception to the general rule that the principal can terminate the authority given to his agent, it is provided that where the agent himself has an interest in the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. (*f*)

Delegation of authority.

As an agent is a mere selected instrument to do certain acts for another, generally, he cannot delegate any portion of his power requiring the exercise of judgment and discretion, unless he has express authority to do so. However, if the powers or the duties are merely mechanical, or if by the ordinary custom of trade, or from the

---

(*a*) *Reversion Fund* v. *Maison Cosway*, (1913) 1 K. B. 364.

(*b*) *Campbell* v. *Anderson*, (1829) 4 Bligh. (N.S.) 513.

(*c*) Ind. Contract Act, sec. 208.

(*d*) *Yonge* v. *Toynbe*, (1910) 1 K.B. 215.

(*e*) *Halbot* v. *Lens*, (1901) 1 Ch. 344; *Starkey* v. *Bank of England*, (1903) A.C. 114.

(*f*) Ind. Contract Act, sec. 202.

nature of the agency itself, a sub-agent may be employed, the agent may employ a sub-agent under his control who will be responsible to him alone to do such acts. (*a*) So, an authority given to a person to draw bills may be exercised by the clerk of that person in his presence; (*b*) and where an agent is authorised to indorse the name of his principal, he may do so by the instrumentality of a third person. (*c*)

Liability of agent signing.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

NOTES.

Agent when liable.

This section is based upon the following *dictum* of Lord Ellenborough in *Leadbitter* v. *Farrow:* (*d*) "Is it not a universal rule that a man who puts his name to a Bill of Exchange thereby makes himself personally liable, unless he states on the face of the bill that he subscribes for another or by procuration of another which are words of exclusion? Unless he says plainly, 'I am the mere scribe,' he becomes liable." The reason of the rule is plain; each party who takes a negotiable instrument makes his contract with the parties who appear on its face to be bound for its payment, and consequently, it is recognised as a part of the Commercial Law that a negotiable instrument must bear no mask but reveal its character upon its face. In this respect, the section is an exception to the general law relating to contracts that a principal though not disclosed on the instrument itself may be proceeded against, if it is discovered subsequently that the agent acted on his behalf. The best mode for an agent to sign or indorse a bill or note for his principal when he means to make the latter, and not himself liable, is to sign or indorse the same as, A.B., (the principal) by his attorney or agent C.D., or more

(*a*) Ind. Contract Act secs. 190 to 193.
(*b*) Ex parte *Sutton*, (1788) 2 Cox 84.
(*c*) *Lord* v. *Hall*, (1849) 8 C. B. 627.
(*d*) (1816) 5 M. & S. 345, 349; *The Elmville*, (1904) P. 319; *T. M. Pigou* v. *Ramkishen*, (1865) 2 W. R. 301.

Sec. 28.

shortly, A.B., by C.D., or C.D., for A.B., or C.D., agent, for A.B. These are sufficiently unequivocal to indicate that the agent acts ministerially and not on his own account. (*a*) The words "*sans recourse*" or 'without recourse to me' are also recommended. The phrase "*per procuration*" is an express intimation of a special limited authority, and a person who takes a bill or note so drawn, accepted or indorsed is bound to inquire into the extent of authority. (*b*) In Sind, it has been held that the pre-fixing of the word "*Dashkhat*" to the signature denotes that the person incurs no personal liability on the instrument (*c*); and the word 'Sri Nishani' has been held not to be sufficient to bind the firm in Punjab. (*d*) This section has no application to a case where it is found that in a mortgage the defendant signed the Hundi as the munim and that money was lent not to him in his personal capacity but to the firm; (*e*) nor does the section apply where the suit is brought not on the note but on the original consideration, in which case the suit can be maintained against the principal as well. (*f*) In Southern India, it is the practice of native merchants to indicate firm transactions by prefixing to their signature the initials of the firm's name, and evidence was admitted to explain such letters and to show whether the bill was signed on behalf of the firm or not. (*g*)

'Exception to the above rule.'

In order to exclude personal liability, an agent should indicate on the negotiable instrument either that he signs as an agent or that he does not intend thereby to incur any personal liability. Mere signing as "agent" will not be sufficient to indicate that the person signs as agent only, though it may be that such a signature will serve the purpose in the case of other contracts such as, charter-parties. (*h*) The word "agent" in a negotiable instrument will be held to be merely descriptive or decorative. (*i*) The question has to be decided on the facts of each case. In English Law, such an addition as "agent" without more, does not exempt the agent from personal liability. (*j*) Where the note contained the words "for M. T. and

(*a*) *Jogeschandra* v. *Mahammad*, 57 Cal. 695 at 702.

(*b*) B. of Ex. Act, sec. 25. See *Castrique* v. *Buttigieg*, (1856) 10 Moo. P.C. 94; *Alexander* v. *Mackenzie*, (1848), 6 C. B. 766; *Atwood* v. *Munnings* (1827) 7 B. & C. 278.

(*c*) *Silleman* v. *Iso Wad*, 2 S. L. R. 11; *Atmaram* v. *Natandas*, (1930) Sind 4.

(*d*) *Shadi* v. *Arji*, 13 P. R. 1871.

(*e*) *Hazari Lal* v. *Sohan Lal*, (1923) All. 407.

(*f*) *Jag Mohun* v. *Sampatlal*, 27 N. L. R. 324.

(*g*) *Muthar* v. *Kadir*, 28 Mad. 544; *Mungumal* v. *A. L. V. R. C. T. Firm*, 4 M. L. T. 309; *Natesa* v. *Sattaya*, 8 L. W. 622.

(*h*) *Ariadne Steamship Co.* v. *James, Mc Kelvie, & Co.*, (1922) 1 K. B. 518.

(*i*) See however *Hazari Lal* v. *Sohan*, (1923) All. 407.

(*j*) *Rew* v. *Pettet*, (1834) I. A. & E. 196; *Eaton* v *Bell*, (1821) 5 B. & Ald. 34; *Dutton* v. *Marsh*, (1871) L. R. 6 Q. B. 361; *Atmaram* v. *Natandas*, (1930) Sind 4.

W. Railway Company," and was signed "Alexander Sizer, Secretary" it was held that the agency was disclosed, it being said that "the signature is distinctly not personal but as Secretary."(*a*) But, where the defendants executed a joint-note being members of the executive committee and on behalf of a co-operative society, it was held, that they were personally liable.(*b*) Signature in the form "J. H. Laundry and Dye Works Limited. J. H. S. Managing Directors" would be deemed to be that of the company by virtue of section 72 of the English Companies Act and would exclude the liability of the Directors, if the form of the note were such as not otherwise to create a joint liability. (*c*) But, where a hundi drawn in favour of a firm 'M and sons' was indorsed twice by them, "M and sons, and M and sons, Managing Agents L. A & Co.," it was held that the words "Managing Agents L. A and Co.," were merely descriptive of M and sons, and did not bind the Company. (*d*) Knowledge of agency to the other party does not free the agent from liability, if he does not disclose on the instrument that he signed as agent, (*e*) and it has been held that even if a person signs as joint-manager of an institution (*f*) or as trustee, or managing director (*g*) or as receiver of a company (he having been appointed as a receiver on behalf of the debenture holders of the company, (*h*) such person will be personally liable; such additions as agent, manager, etc., attached to a signature being regarded as mere *designatio personae*. (*i*) So strict is the rule (*j*) that where three partners signed a promissory note which was made on behalf of a firm and the fact appeared in the note also, it was held that the note was that of the partners as principals, and not as agents of the partnership, so that the adjudication of one of them in the firm's name (to which the other partners were not parties) and composition by him, did not absolve the other partners from liability on the note. (*k*)

These cases were decided under the English Common Law before

(*a*) *Alexander* v. *Sizer*, (1869) L. R. 4 Ex. 102; *Lindus* v. *Melrose*, (1858) 157 E. R. 434.

(*b*) *Gray* v. *Raper*, (1866) L. R. 1 C. P. 694.

(*c*) *Chapman* v. *Smethurst*, (1909) 1 K. B. 927 (C. A.).

(*d*) *Sreelal* v. *Lister Antiseptic Dressing Co.*, 52 Cal. 802; *Jhandu Mal & Sons* v. *Dehra Dun etc. Tramway Co.*, 52 All. 883.

(*e*) *Leadbitter* v. *Farrow*, (1816) 5 M. & S. 345; *Venkatanarayana* v. *Venkatanarasimha*, 1913 M. W. N. 1005.

(*f*) *Jones* v. *Jackson* (1870) 22 L. T. (N. S.) 828.

(*g*) *Sitaram* v. *Chimandas* 52 Bom. 640; *Elliott* v. *Bax-Ironside*, (1925) 2 K. B. 301.

(*h*) *Kettle* v. *Dunster*, (1927) 43 T. L. R. 770.

(*i*) *Courtauld* v. *Saunders*, (1867) 16 L. T. (N.S.) 562. *Cf.* B. of Ex. Act, sec. 26. See *Muhamadi Begam* v. *Durga*, 40 I. C. 452; *Jajodia Cotton Mills Ltd.* In the matter of, (1927) Cal. 612; *Shyam Sundar* v. *Titaghur Paper Mills*, (1928) Cal. 123.

(*j*) *Muthusami* v. *Somasundaram*, 53 M. L. J. 814; *Koneti* v. *Gopala*, 38 Mad. 482. (F. B).

(*k*) *Fatima* v. *Mohideen*, 4 Rang. 551.

Sec. 28. the passing of the Bills of Exchange Act of 1882. Chalmers is of opinion that section 26 in that Act corresponding to this section modifies the rigour of the Common Law rule, or that at any rate, these decisions must be examined carefully with the words of that section. It has, however, been held by White, C. J., that both the Indian and the English Legislatures only intended to reproduce the English Common Law rule, and that in spite of the difference in the language of the two sections, they were substantially the same in effect. (*a*) It has been held that where a promissory note was executed by a person, described as an agent holding a power-of-attorney from another and for a consideration disclosed on the instrument not personal to himself, the maker was personally liable and there was no sufficient indication in the note to exclude his personal liability. (*b*) Unless the maker has clearly affixed his signature to the negotiable instrument on account of or on behalf of a principal whose name is disclosed or unless though he has signed unconditionally, he has unequivocally and clearly disclaimed in some portion of the document his own responsibility and mentions the name of the person really liable, he cannot escape personal liability. (*c*) In this respect there is no difference between an instrument in English or in the Vernacular, and the section must be construed to apply strictly to them also in the interests of trade. (*d*) Where a trustee obtains a loan on his personal security for purposes of a mutt, the trust property cannot be charged, and there can only be a personal decree against the trustee. (*e*) Again, where a trustee borrows money for the benefit of the temple without consulting his co-trustees, he is personally liable. (*f*) An executor's description as Managing Director in the body of the promissory note has not the effect of excluding his personal liability. (*g*) Where however, in a note the makers are described in the body as the manager and agent respectively of an endowment and they also *sign* the note in that character, they are not personally liable on the instrument. (*h*) Even after the passing of the English Act, it has been held that where two Directors of a limited company drew a cheque on behalf of the company, adding to their respective signature the word 'director' they were yet personally liable, though the cheque was stamped near

(*a*) *Koneti* v. *Gopala*, 38 Mad. 482 (F. B.) on appeal from 23 M. L. J. 417.

(*b*) *Somasundara* v. *Venkatanarayana*, 26 I. C. 356; *Govindan* v. *Nana*, 27 M.L.J. 595 (F B.); *Koneti* v. *Gopala*, 38 Mad. 482 (F. B); *Aiyathurai* v. *Dharmasiva*, 9 M. L. T. 205.

(*c*) *Janki* v. *Kishan*, 46 Cal. 663 (P.C.); *Nasibullah* v. *Anand*, 42 All. 642.

(*d*) *Venkatanarayanan* v. *Venkata Narasimha*, (1913) M. W. N. 1005.

(*e*) *Saminatha* v. *Srinivasa*, 32 M. L. J. 259.

(*f*) *Thiruvengadasami* v. *Veera*, 30 I. C. 778 (Mad.).

(*g*) *Shyam Sundar* v. *Titaghar Paper Mills Co. Ltd.*, (1928) Cal. 123.

(*h*) *Sundaresa* v. *Sambasiva*, 2 L. W. 188.

the top with the name of the company, which was thought to be insufficient to show the representative character of the signature. (*a*) If guardians or trustees or managers of charities sign notes affixing to their names their office, they will be nevertheless held personally liable, (*b*) the reason being that the note would otherwise be in-operative, as they cannot bind by such an instrument the person or the property of the ward, or of the trust, the note still being the promise of the signor, the name of his office being but a part of his description. A number of cases (*c*) seems to recognise this and they lay down that a guardian cannot impose a personal liability on the minor and if the note be regarded as an undertaking merely to pay out of the minor's estate, then it would not be payable at all events and that would strike at the note detracting from "the unconditional nature of the undertaking." It may be worth quoting here the view of an eminent American Judge on the liability of a guardian of an insane person on a negotiable note given by him. The learned Judge said: "If an action is maintainable against any person, it must be the defendant; for the guardian of an insane person cannot make his ward liable to an action as on his own contract, by any promise which the guardian can make. Neither can the defendant be sued in his capacity of guardian so as to make the estate of the ward liable to be taken in execution; for the judgment is not against the goods and estate of the ward in his hands but against himself. A creditor may sue the insane person, who shall be defended by his guardian, and in that case, judgment being against the insane person, it may be satisfied by his property. The defendant's description of himself in the notes as guardian cannot vary the form of the action; but it is for his own benefit, that, on payment of the notes, he may not be precluded from charging the moneys paid to the account of his ward. If the defendant therefore was ever liable to this suit, he must continue liable, notwithstanding the discharge of the guardianship; for by that the plaintiff's right cannot be affected, whose claim is on the defendant personally and not on his official character."(*d*) Of course, the minor's estate will be held liable if the creditor without remaining satisfied by a mere promise on the part of the guardian to pay,

---

(*a*) *Landes* v. *Marcus*, (1909) 25 T. L. R. 478, following *Dutton* v. *Marsh*, (1871) L. R. 6 Q. B. 361; *Elliott* v. *Bax-Ironside*, (1925) 2 K. B. 301.

(*b*) *Palaniappa* v. *Shanmugham*, 41 Mad. 815; *Chidambaram* v. *Veerappa*, 22 M. L. T. 380.

(*c*) *Waghela Rajsanji* v. *Shekh Masludin*, 11 Bom. 551 (P. C.); *Surendra Nath* v. *Atul Chundra*, 34 Cal. 892; *Bhawal* v. *Baijnath*, 35 Cal. 320; *Duraisami* v. *Muthial*, 31 Mad. 458; *Krishnamurthi* v. *The Bank of Burma*, 35 Mad. 692; *Mir Sarwarjan* v *Fakhruddin*, 39 Cal. 232 (P. C.) Cf. *Swaminatha* v. *Srinivasa*, 32 M. L. J. 259.

(*d*) 1 Parsons, 90 (note).

Sec. 23. secures his right by way of mortgage or charge, which is certainly in the power of a guardian to give. (*a*) It has, however, been held by a Full Bench of the High Court of Madras that on an oridinary contract under which a guardian borrowed money without creating a charge on the property, a decree can be passed against the minor on his attaining age in respect of property in his hands, if the obligation was one binding on the minor's estate under his personal law. (*b*) On the question, as to how far the above principles are applicable to contracts on negotiable instruments executed by guardians, decisions are not uniform. It has been held in Madras (*c*) that where the mother of a minor borrowed for purposes binding on him, and executed a promissory note therefor but did not sign the same as guardian, and the minor was sued on the note, that the estate of the minor was liable and that the guardian was not personally liable. It is difficult to see on what basis the estate was made liable. If it was on the note, the decision is clearly wrong especially in view of the observations of the Judicial committee in *Ma Hnit* v. *Hashim.* (*d*) The learned Judges state that the Act contains no provisions as to notes signed by a guardian, and that sections 28 and 29 do not cover all cases of representation. It is further stated that the case of one person signing for another *sui juris* is not *pari passu* with that of a person executing a document on behalf of another who is incapable of contracting. The correctness of this decision was questioned in *Ammalu* v. *Namagiri*(*e*), and in later cases it has been laid down that though section 28 of the Act applies in terms only to principals and agents, the principles underlying the section are of general application and can be applied to cases of guardians and wards also. (*f*) It was also pointed out that this section is in one respect different from the corresponding section 26 of the Bills of Exchange Act; for while the English law requires that the words indicating exclusion of personal liability must be added to the signature itself, the law in India is less rigorous and the intention to exclude personal liability may be inferred from the language of the whole of the instrument.(*g*) Therefore, in all cases where a guardian acts for his minor

---

(*a*) *Hunooman Persaud* v. *Mussumat Babooee*, 6 M. I. A. 393.

(*b*) *Ramajogayya* v. *Jaganadhan*, 42 Mad. 185; *Zamindar of Polavaram* v. *Maharaja of Pitapuram*, 54 Mad. 163; *Ramakrishna* v. *Kasivasi*, 27 L. W. 322. Cf. sec. 230 of Ind. Contract Act.

(*c*) *Krishna* v. *Nagamani*, 39 Mad. 915.

(*d*) 38 M. L. J. 353, 360 (P.C.).

(*e*) 33 M. L. J. 631.

(*f*) *Subbanna* v. *Subbarayudu*, 50 M. L. J. 125; *Nanhe* v. *Dawlat Ram*, 2 I. C. 403 (All.); *Muthusami* v. *Somasundaram*, 53 M. L. J. 814; *Ramasami* v. *Muthusami*, 30 I. C. 481; *Hari Mohan* v. *Sourendra*, 41 C. L. J. 535; (the case may be reconciled on the ground that the liability is based on the original consideration.)

(*g*) *Ibid*; but see *Meenakshisundaram* v. *Ranga*, 35 L. W. 397.

and executes a negotiable instrument for debts borrowed on his behalf, he must clearly and unequivocally indicate in the instrument itself, that he does not make himself personally responsible. In no case can the minor be made liable on a note executed by a person acting as his *de facto* guardian. (*a*) Whether the same principles apply to trustees and managers of charities is not easy to answer. It has been said that such a person drawing a bill or making a note as a trustee is not acting on behalf of a principal, for he is the person in charge of funds and it was *prima facie* for him to arrange for payment. He is, therefore, liable on the instrument. (*b*)

Construction.

If there is any ambiguity in the instrument with reference to the fact whether the agent signed as agent of the principal or not, evidence of usage is always admissible to show the character in which the agent signed (*c*). Where the agent of a Nattukottai Chetti firm of Southern India, in executing a negotiable instrument prefixes the firm's *vilasam* or initials, this is a well-understood indication that he is acting only as an agent and has been so recognized by the courts; but when a man signs as trustee prefixing the charity *vilasam*, there is on the face of the indorsement no clear indication that he contracts for any one else but himself. (*d*) It would seem also that the courts may take into consideration the circumstances under which the instrument or the indorsement was made, and the rule in England in such cases is that the construction most favourable to the validity of the instrument should be adopted. (*e*) The question whether an agent signed for himself or on behalf of the principal is a question to be determined in each case on the words used in the instrument. Oral evidence in such cases is subject to the same rule as in the case of written contracts. (*f*)

The personal liability of the agent under the section cannot be taken advantage of by the persons who induced him to sign in a form not excluding personal liability. Where the Director of a bank in order to conceal an unauthorized loan by him from the bank induced the defendant to sign a promissory note for a large amount, promising that he would himself pay the principal and interest on the loan, and in the books of the bank the Director's liability was wiped out and the respondent was taken as the debtor, it was held,

(*a*) 61 M. L. J. (N. R. C.) 45.

(*b*) *Palaniappa* v. *Shunmugam*, 41 Mad. 815; *Swaminatha* v. *Srinivasa*, 32 M. L. J. 259. See also *Thiruvengada* v. *Veera*, 30 I. C. 778. Contra, *Sundaresa* v. *Sambasiva*, 2 L. W. 188.

(*c*) *Mungumal* v. *A. L. V. R. C. T. Firm*, 4 M. L. T. 309.

(*d*) *Palaniappa* v. *Shunmugam*, 41 Mad. 815.

(*e*) *Elliott* v. *Bax-Ironside*, (1925) 2 K. B. 301, 306; *Kettle* v. *Dunster & Wakefield*, (1927) 138 L. T. 158.

(*f*) *Muthar* v. *Kadir*, 28 Mad. 544; *Koneti* v. *Gopala*, 38 Mad. 482 (F. B.); see also C. R. P. 720 of 1915 (Mad.).

Sec. 29.

that the Director was not an agent of the bank in this transaction as to impute the inducement to the bank, and that the defendant cannot escape liability under the exception to this section. (*a*) This rule is founded upon the law of estoppel. This of course cannot affect a transferee from such persons for value without notice.

If a person signs his principal's name, on a bill or a note in excess of the authority given to him, or even without any authority at all, the question arises whether such person is liable as a party to the paper itself. His name is on the paper not as undertaking a personal obligation on himself, but in a form expressly negativing such obligation, and professing to assert that the obligation is on another. Under such circumstances, an agent cannot be estopped from denying personal obligation as a party to the instrument, for he never held himself out to be such. But he may be made liable to the holder for deceit (*b*) or breach of warranty of authority (*c*); and this is so, irrespective of the ostensible agent's belief in the existence of the alleged authority. (*d*) This rule of law applies as much to the case of a person who untruly represents the extent of the authority given to him by another, as to that of a person who represents himself as the agent of another when as a matter of fact he has no authority from him. (*e*)

The section has no application to the case where the suit is brought not on the pro-note but on the original consideration ; in such a case, the suit can be maintained against the principal as well. (*f*)

Liability of legal representative signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

NOTES.

The term legal representative includes those representatives who are so by operation of law as heirs, and those who become so

(*a*) *National Bank of Upper India* v. *Bansidhar*, 57 I. A. 1 = 5 Lah. 1.

(*b*) *Polhill* v. *Walter*, (1832) 3 B. & Ad. 114.

(*c*) *West London Bank* v. *Kitson*, (1884) 13 Q. B. D. 360 ; *Kelner* v. *Baxter*, (1866) L. R. 2 C. P. 174; *Jenkins* v. *Hutchinson*, (1849) 18 L. J. Q. B. 274, 276.

(*d*) *Starkey* v. *Bank of England*, (1903) A. C. 114 ; *Collen* v. *Wright*, (1857) 7 E & B. 301 ; *Yonge* v. *Toynbea*, (1910) 1 K. B. 215.

(*e*) *Ganpat* v. *Sarju*, 34 All. 168.

(*f*) *Jankidas* v. *Sirkishan*, 46 Cal. 663, 667 (P. C.) ; *Subbanna* v. *Subbarayudu*, 50 M. L. J. 125, 130 ; *Ammalu* v. *Namagiri*, 33 M. L. J. 631, 636; *Venkatachalapati* v. *Ramakrishnayya*, (1930) Mad. 168 ; *Jag Mohun* v. *Sampat Lal*, 27 N. L. R. 324.

Sec. 29.

Legal representative.

voluntarily as executors or administrators. When a person dies, the administration of his affairs devolves upon his personal representatives. When the execution of the last will of a deceased person is confided to any one, then he is called the executor, (*a*) but if there is none named in the will, or if the person named declines to act, the appointment of a person to administer the estate of the deceased devolves upon the Courts, and any person so appointed by a competent authority is called the administrator. The powers of the executor named in a will accrue at the day of the testator's death, for it is then that the will comes into force, (*b*) and in the case of the administrators, their powers commence only from the time of appointment, though they relate back to the date of the testator's death.

Their liability.

The liabilities of an executor or administrator of a deceased person on bills issued by them often give rise to difficulties. "Where he merely winds up the transaction commenced by the testator, it is right that he should be able to protect himself from personal liability, but where he carries on the business and engages in fresh transactions, it is clear that the fact that he is an executor will not enable him to carry it on as a limited liability concern. (*c*)

Under the section, unless the legal representative expressly limits his liability to the extent of the assets in his hands received by him as such, he will be held personally liable. (*d*) Signing as executor or merely indicating that he signed as executor or administrator will not be sufficient to exclude personal liability; and in this respect, the position of an agent under section 28 would seem to be better than the position of the legal representative under this section; for while under section 28, it is sufficient for the agent to indicate that personal liability is excluded, under section 29 there must be express words limiting liability and that to the extent of the amounts. (*e*) This rule is perhaps founded upon the following *dictum* of Buller, J. in *King* v. *Thorn*. (*f*) "When the executor or administrator or legal representative makes or indorses a bill or note in his own name adding thereto the words 'as executor, administrator or legal representative', he will still be personally liable thereon, such phrases or terms being treated as mere surplusage. For, it is immaterial whether they (the executors) indorse it (the bill) as executors or not. If they indorse it at all, they are liable personally and not as executors,

(*a*) Ind. Succession Act, sec. 2 (c).
(*b*) *Venkatasubamma* v. *Ramayya*, 59 I. A. 112.
(*c*) Chalmers (9th Edn.), p. 94.
(*d*) *Ammalu* v. *Namagiri*, 33 M. L. J. 631; *Subbanna* v. *Subbarayudu*, 50 M. L. J. 125.
(*e*) *Subbanna* v. *Subbarayudu*, 50 M. L. J. 125.
(*f*) (1786) 1 T. R. 487; See *Liverpool Borough Bank* v. *Walker*, (1849) 4 De G. & J. 24.

Sec. 29.

for their indorsement would give an action against the effects of the testators." In the above case *Burrow*, J. said "they could charge his estate with the original debt, and although giving the note in question might not have amounted to an admission of assets in their hands at the time, still by the promise of payment of interest thereon, they made the debt their own, as it clearly showed that it was to be paid on a future day, and amounted in effect to a request to the plaintiff to forbear to sue on the original demand." (*a*) In all such cases, however, it is open to the executor to limit his liability by stipulating to pay out of the assets received. Otherwise he will be personally liable. But, if the holder chooses to sue the defendant as executor, he cannot thereupon rely on this section for a personal liability; for he cannot have it both ways. (*b*) Moreover, except when there is necessity to borrow for the purposes of the estate, he cannot be sued as an executor, so as to get execution against the assets of the testator. (*c*)

Their rights.

The legal representative of a person is entitled to the possession of bills and notes left by the deceased, and it is in fact his duty to present or demand payment, or to give notice of dishonour necessary, and to do all acts which could have been done by the deceased, if alive. Even if a bill be indorsed to a person who is dead, by a person ignorant of his death, (*d*) or if such indorsement is made in good faith with knowledge of the death, (*e*) it will be an indorsement to the legal representative of the deceased, and the instrument will become part of the assets. The legal representative may recover on such instrument. Where a promissory note stands in the name of a member of a joint Hindu family and the debt is not due to the family, his widow, when he dies issueless, is the person entitled to sue and not the surviving members of the family. (*f*)

If a bill or note was held by the deceased at the time of his death, the legal representative may transfer it by indorsement. (*g*) Such indorsement will for all purposes be as effectual as one made by the deceased person himself. (*h*) The widow of a deceased Hindu,

---

(*a*) See *Childs* v. *Monins*, (1821) 2 Broad & B. 460; Cf. *Aspinall* v. *Wake*, (1833) 10 Bing. 51; *Liverpool Borough Bank* v. *Walker*, (1849) 4 De G. & J. 24.

(*b*) *Pestonji* v. *Bai Meherbai*, 30 Bom. L. R. 1407.

(*c*) *Anant Ram* v, *National Bank of Upper India*, (1922) Oudh. 20.

(*d*) *Murray* v. *East India Co.*, (1821) 5 B. & Ald. 204.

(*e*) Daniel, sec.. 264.

(*f*) *Gopala* v *Venkatakrishna*, 26 M. L. J. 224.

(*g*) *Rawlinson* v. *Stone*, (1746) 3 Wils 1; *Robson* v. *Hamilton*, (1891) 2 Ch. 559 (cheque also); 10 L. W. (N. R. C.) 53.

(*h*) *Watkins* v. *Maule*, (1820) 2 Jac. & W. 237, 243.

dying without issue though having a limited interest in the estate, can negotiate the instrument by indorsement. (*a*) In all cases of indorsing, the legal representative must take care to limit his liability to the extent of the assets in his hands, otherwise, he would be personally liable in the event of dishonour. This does not, however, empower a personal representative to purchase notes indorsed by the deceased person in his own right, as it is not allowable for him to speculate on the subject of his trust (*b*). The fact that there was an indorsement already on the instrument by the deceased person will not entitle the legal representative to complete the negotiation by delivery of the bill or note, but he can do so only by a fresh indorsement and delivery ; (*c*) but if the equitable title to the instrument had already passed to the transferee, the legal representative may be compelled to indorse it in his favour. Whether one of several co-executors or administrators can indorse a bill or note payable to a deceased person so as to convey title to a holder is not clear under the English law, (*d*) though under the American law such indorsement is said to be valid. (*e*)

Liability of drawer.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

NOTES.

The definition in the Indian Act of the engagement which the drawer of a bill of exchange enters into with the person in whose favour it is drawn is too compendiously expressed to be clear ; in fact, it has given rise to more than one difficulty. When a bill or draft is payable at sight, or on demand and is not paid by the drawee when duly presented for sight and payment, no difficulty arises. Immediately on failure of payment, whatever may be the real state of accounts between the drawer and the drawee, the former becomes

---

(*a*) *Monmohinee* v. *The Secy. of State for India*, (1874) 22 W. R. 106 ; *Bidya Soonduree* v. *Baboos Ashootosh Dhur*, (1871) 15 W.R. 267 ; *Gopala* v. *Venkatakrishna*, 26 M. L. J. 224.

(*b*) Daniel, sec. 264.

(*c*) Cf. *Bromage* v. *Lloyd*, (1847) 16 L. J. Ex. 257.

(*d*) See Williams on Executors, (10th Edn.) p. 716, note (d).

(*e*) Daniel, sec. 266.

Sec. 30.

liable to the payee for the amount which will place him in the same position as if the money had been duly paid. (*a*) The drawer of a bill or cheque cannot set up a collateral agreement as a defence to a claim under this section. When as security for acceptance, the drawer of a Hundi handed over to a bank, railway receipts for goods consigned to him as collateral security, and the bank through mistake handed over the receipts to the drawee before acceptance, it was held that the loss of the collateral security in no way affected the right to recover the amount of the Hundi from the drawer. (*b*)

When not accepted.

Whether in the case of bills or drafts payable a certain period after sight or after date, of which acceptance had been refused by the drawee, the holder can proceed at once against the drawer and other parties is not clear from the section. The first point for consideration is whether such bills can be said to have been dishonoured, if the drawee refuses to accept them. Under section 61, bills payable at a certain period after sight, should be presented for acceptance within a reasonable time after they are drawn, and if the drawee refuses to accept them, they are said to be dishonoured (Section 91). As soon as they are dishonoured, it may be said that the liability to compensate under this section arises, (*c*) provided due notice of dishonour is given, though the section is not clear on the point. It has been held that the drawer is not liable if due notice of dishonour is not given, and the mere fact that the payee of a Hundi met the drawer sometime after the maturity of the instrument and that he demanded payment is not sufficient compliance with the provisions of sections 93 and 106 of the Act. (*d*) But in the case of bills payable at, or after a fixed date, the Act does not require them to be presented for acceptance before that date. If a bill payable after a fixed date is presented for acceptance before such date, and the drawee refuses to accept, it cannot be strictly said that the drawee committed default in acceptance "upon being duly required to accept the bill," as the Act does not require it to be accepted at all before that date. and the bill cannot be said to be dishonoured under section 91 of the Act. This position is somewhat strengthened by the fact that there is no provision in the Indian Act corresponding to the provision in section 55 cl. (1) of the Bills of Exchange Act, by which the drawer of a bill by drawing it is said to contract, among other things, that it shall be accepted by the drawee if presented for acceptance, and that

---

(*a*) *Sheth Kahandas* v. *Dahia Bhai*, 3 Bom. 182.

(*b*) *Karim* v. *People's Bank of India*, 30 I. C. 35.

(*c*) *Miller* v. *The National Bank of India*, 19 Cal. 146; see *Ram Ravji* v. *Pralhaddas*, 20 Bom. 133.

(*d*) *Sobhomal* v. *Pohumal*, 13 I. C. 255; *Suppai* v. *Kandasami*, 19 L. W. 560.

if it be dishonoured by any refusal on the part of the drawee, (*a*) he will compensate the holder or other party compelled to pay it, on requisite proceedings on dishonour being taken. This point has been considered by the Bombay High Court (*b*) and it was held that the law in British India before the passing of the Negotiable Instruments Act was the same as the Common Law in England which is now reproduced in the section of the Bills of Exchange Act above quoted, and that there was no indication in the Act of any intention to alter it; and it was further said that "the several sections in chapter (*sic*) 61 relating to presentment for payment appear to us to pre-suppose that the bill has not been already dishonoured by non-acceptance. When it is dishonoured by non-payment, the provisions of chapter VIII come into play. It is true that there is no such explicit declaration of the law upon the subject in the Indian Act as in section 43, cl. (2) of the English Act. But the whole scope and tenor of chapter VIII of the Indian Act appear to contemplate the same result as is there declared to follow from non-acceptance."

The next question that presents itself is whether, taking the instruments above considered to be dishonoured, the holder has any immediate right of recourse against the drawer and indorsers, or whether he should wait and present the bill again for payment at maturity. This point is expressly provided for in section 43, cl. (2) of the Bills of Exchange Act, and Chalmers is of opinion that this immediate right of recourse arising on non-acceptance is an exceptional right peculiar to English and American Law. (*c*) Such being the case, it is doubtful whether such an exceptional right should be imported into Indian law in the absence of a specific provision. A further argument against such importation may be gathered from section 117 of the Act laying down rules for determining compensation. According to it, the holder is entitled as compensation to the full amount due upon the instrument, and so in cases where dishonour by non-acceptance takes place long before the amount becomes due, the holder will gain an advantage by the non-acceptance, in that he gets the amount due earlier than he will in the ordinary course. But, it is submitted that the section lays down the liability of the drawer without qualifying it as to the time when it should arise, and hence it must be taken that the liability of the drawer arises immediately on dishonour, provided due notice of dishonour is given, and Article 78 of Sch. I of the Limitation Act (1908) supports this view. The High Court of

(*a*) *Cf.* B. of Ex. Act. sec. 42.

(*b*) *Ram Ravji* v. *Pralhaddas*, 20 Bom. 133, 134; *Veerappa* v. *Vellayan*, (1919) M. W. N. 780.

(*c*) Chalmers (9th Edn.), 166.

Sec. 30.

Bombay has laid down in the case (*a*) already noticed that the holder's right of recourse against the drawer arises immediately on dishonour by non-acceptance; and the High Court of Calcutta is apparently of the same opinion. (*b*) It is to be noted that in the Bombay case it was assumed that the liability of the drawer arises immediately under the section, and that in the Calcutta case the question was not discussed. It is difficult to find out the principle upon which such immediate right of recourse can be based.

Of fresh cause of action of non-payment.

In connection with this point, the further question arises whether if the holder chooses to wait till the maturity of the instrument, he has a fresh cause of action by reason of non-payment on that date. It is submitted that no fresh cause of action accrues to him. On this point, we are tempted to quote the following observations of Parke, B. in *Whitehead* v. *Walker* (*c*) not only as settling the point under consideration, but also as throwing considerable light on the points above dealt with. "The drawer of a bill, it was contended, enters into a double engagement with the payee, and through him with the successive holders of the bill, namely, first, that the drawee shall accept the bill when regularly presented to him for acceptance; and secondly, that he shall pay the bill when regularly presented to him for payment. And if this be a correct representation of the engagement entered into by the drawer, the conclusion seems unavoidable, that whatever right of action the holder might have acquired by the non-acceptance, he certainly is not precluded from suing in respect of the default of payment. But we are of opinion that the contract entered into by the drawer is not such as is contended for by the plaintiff and that he in fact enters into one contract only; namely, in the case of a bill made payable after sight, that the drawee shall, on the bill being presented to him in a reasonable time from the date, accept the same, and having so accepted it, shall pay it when duly presented for payment according to its tenor; and in the case of a bill payable after date, that the drawee shall accept it, if it is presented to him before the time of payment, and having so accepted it, shall pay it when it is in due course presented for payment; or if it is not presented for acceptance at all, then that he shall pay it when duly presented for payment. *** It is clear that by the non-acceptance, followed by the protest and notice, the holder acquires an immediate right of action against the drawer—a right of action, be it observed, not in respect of any

(*a*) *Ram Ravji* v. *Pralhaddas*, 20 Bom. 133; *Veerappa* v. *Vellayan*, (1919) M. W. N. 780.

(*b*) *Miller* v. *National Bank of India*, 19 Cal. 146.

(*c*) (1842) 9 M. & W. 506, 514.

Sec. 30.

special damage from the non-acceptance, but a right of action on the bill, *i.e.*, a right of action to recover the full amount of bill. The effect of the refusal to accept is*** that the drawee says to the holder, "I will not pay your bill; you must go back to the drawer and he must pay you." The holder thus acquires by the non-acceptance the most complete right of action against the drawer which the nature of the case admits, and no subsequent act or omission of the drawee can give him a more extensive right against the drawer than he has already acquired. But further, on the failure of acceptance the holder is bound to give immediate notice to the drawer, and if he omits to do so, he forfeits all right of action against him, not only in respect of the default of acceptance, but also in respect of subsequent non-payment. Now it is very difficult to reconcile this doctrine with the notion that a new right of action arises from the non-payment; for if that were so, it could hardly be that such new right of action could be destroyed by the previous neglect to give notice of a matter unconnected with that out of which the second right of action is supposed to arise."

In addition to what has been already said as to the engagement of the drawer with the payee, that is, that the drawee will accept the instrument when duly presented for acceptance and pay at maturity, and that in default of such acceptance by the drawee, he (the drawer) will compensate the payee or any holder from him, he further represents that the person on whom he draws does exist, and is capable of binding himself by an acceptance. (*a*) Besides, the drawer, if he draws a bill payable to the order of a payee, is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse. (*b*)

Notice of dishonour essential.

Notice of dishonour to the drawer is absolutely necessary, and unless and until it is given, the holder has no cause of action against him. (*c*) In every case, it will be the duty of the holder, and the burden of proof will be upon him to show that notice was given, and if not given, he was excused for one or more of the reasons specified in section 98 of the Act (*d*). So necessary is notice of dishonour that *laches* or neglect in giving such notice will absolutely discharge or release the drawer from liability, for if a party takes negotiable security of this nature, he takes it subject to the law incident to all such

(*a*) Cf. Secs. 61 & 91. *post*.

(*b*) Sec. 121, *post*; *Collis* v. *Emmett*, (1790) 1 H. & Bl. 313; sec. 55, (1) (b) B. of Ex. Act.

(*c*) *Ram Ravji* v. *Pralhaddas*, 20. Bom. 133; *Mulchand* v. *Suganchand*, 1 Bom. 23; *Miller* v. *The National Bank of India*, 19 Cal 146.

(*d*) *Jambu Ramaswamy* v. *Sundararaja*, 26 Mad. 239, 241; *Veerappa* v. *Vellayan*, (1919) M. W. N. 780.

Sec. 30. securities. (*a*) This doctrine of notice of dishonour as propounded in the Act can with propriety be applied to Hundis also, unless it is found there is any local usage to the contrary, for it is said "that the doctrine of notice of dishonour is based upon a just and equitable principle and that it may rightly and fairly be applied to Hundi transactions." (*b*) Even before the Act, notice of dishonour was necessary to be given in order to entitle the holder to sue the drawer for compensation, the only difference being that reasonable, but not immediate notice of dishonour was all that was required (*c*).

The notice required may be given by the holder himself within a reasonable time after dishonour; or if he has failed to do so, or if the notice he gave cannot avail because of some defect, he may take advantage of any due notice of dishonour received by the drawer from any other party liable on the instrument.

Under this section, the drawer alone is made liable to the holder, and the drawee ought not to be made a party in a suit against the drawer if he has not accepted, as the holder can have no cause of action against him then. (*d*) If the drawee has accepted, then the holder may sue either or both of them in the same suit or in separate suits (*e*); neither bar of limitation against the acceptor, (*f*) nor merely obtaining a decree against him without satisfaction (*g*) will absolve the drawer from being sued at the instance of the holder. The Statute of Limitation begins to run against the holder from the time of refusal to accept, and the period is three years. (*h*)

The drawer cannot be allowed to plead in a suit by the holder that the bill had been discounted before maturity by the acceptor and re-issued by him. (*i*) He will be absolved only if he shows that the bill was in the hands of the acceptor at maturity and was delivered by him to the plaintiff after it became due. (*j*)

In case of accommodation bills drawn for the accommodation of the drawer, in addition to the contract implied in favour of the payee or holder, the drawer is bound to indemnify the acceptor if he suffers any damage on account of his acceptance on his behalf.

(*a*) *Bahadur Chand* v. *Ghulab Rai*, 11 Lah. 34.

(*b*) *Moti Lal* v. *Moti Lal*, 6 All. 78, 81; *Ram Ravji* v. *Pralhaddas*, 20 Bom. 133.

(*c*) *Megraj Jagannath* v. *Gokaldas*, *Mathuradas*, 7 B. H. C. R. 137 (O.C.J.); *Amiruddi* v. *Bahadoor*, 30 Cal. 977; Cf. *Gobind* v. *Mathoora Sabooya*, 3 Cal. 399; see notes to sec. 93, *post*.

(*d*) *Sheth Khahandas* v. *Dahia Bhai*, 3 Bom. 182.

(*e*) *Basant* v. *Kolahal*, 1 All. 392; Civ. Pro. Code, O. 1, R. 6.

(*f*) *Jambu Ramaswamy* v. *Sundara raja*, 26 Mad. 239

(*g*) *Pigue* v. *Ram Jushunt*, (1864) 1 W. R. 95.

(*h*) Ind. Limitation Act, Sch. I, Art. 78.

(*i*) *Attenborough* v. *Mackenzie*, (1856) 25 L. J. Ex. 244.

(*j*) Sec. 90, *post*.

When the drawee refuses to accept, or the acceptor refuses to pay at maturity, the drawer must bear all losses and expenses, that is, the holder will have to be compensated not only for the principal sum, but also in certain cases for interest, re-exchange, and costs as a consequence of the bill not being honoured. (*a*)

The contract of the drawer of a cheque is similar to that of the drawer of a bill; only there is no acceptance of a cheque, but, payment on due presentment; if the cheque is not paid, the holder has his remedy against the drawer.

The obligations of the drawer are subject to any contract to the contrary. He may by an express stipulation in the instrument negative or limit his own liability, as by drawing *sans recourse* or drawing as an executor stipulating for payment out of the assets of the deceased; or he may waive as regards himself all or some of the holder's duties, *e.g.*, waiving notice of dishonour or such other duties. (*b*) He cannot, however, set up a collateral agreement as a defence to an action. So, when the drawer handed over some Railway receipts as collateral security for acceptance and when by mistake the receipts are handed over to the drawee before acceptance, the right to recover the amount of the Hundi is not affected by the loss of the collateral security. (*c*)

The above proposition may have to be re-considered in view of the observations of the Privy Council in Sassoon's case. (*d*) In that case, certain sellers of jute in Calcutta drew bills on the buyers in England (who had obtained letters of confirmed credit with the Eastern Bank) which were discounted with the International Bank in Calcutta, with a letter of description "As for our 3 months D/A drafts on G. K. & Co;" and the drafts bore the indorsement to the effect "value received for bales" shipped drawn under agreement with the Eastern Bank, and the letter of credit also was sent along with the drafts. The drafts were accepted and the bills of lading were handed over to G. K. & Co., in such acceptance. The bills, however, were dishonoured at maturity. In a suit by the International Bank against the drawers at Calcutta, it was held, that there was no contract interfering with the ordinary liability of the drawers and that they were liable. It was pointed out that the only duty conveyed to the discounting Bank by the words D/A was that they should hand over the

(*a*) Sec. 117. *post.*

(*b*) See *Kirkwood* v. *Carroll*, (1903) 1 K. B. 531; *Yates* v. *Evans*, (1892) 61 L. J. Q. B. 446.

(*c*) *Karim* v. *People's Bank of India*, 30 I. C. 35.

(*d*) *Sassoon & Sons Ltd.* v. *The International Banking Corporation*, 55 Cal. 1, 17.

Sec. 31.

documents of title on acceptance which was done in the present case. There was no further duty on them to keep in-tact the liability of the Eastern Bank on the letter of credit by either discounting the bills only with them or handing over the documents of title to them. It may be that the transaction gave an option to the International Bank to look to the Eastern Bank for payment ; they are not bound to enforce it. (*a*)

Liability of drawee of cheque.

31. The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

NOTES.

The drawee of a cheque is always a banker. The characteristic feature of the legal status of a banker is the obligation under which he lies as the debtor of his customer to honour the cheques of the latter, provided they are legal. A banker is entitled to refuse payment of a cheque drawn in a form whose legality is doubtful. (*b*) This obligation to honour customer's cheques arises from the terms implied in the contract entered into between the banker and the customer on opening the account. In other words, the relation between the customer and his banker is that of the creditor and debtor with a super-added obligation on the part of the banker to honour the cheques of his customer, as long as there are assets of the customer in his hands. (*c*) If he refuses to do so, he is liable in an action by the customer for such damages as may be a reasonable compensation for the injury which he is likely to sustain by reason of the dishonour of the cheque. (*d*) This contract between

(*a*) *Sassoon & Sons* v. *The International Banking Corporation*, 55 Cal. 1, 17.

(*b*) Hart on 'Banking' (3rd Edn.) 259 ; *Emanuel* v. *Robarts*, (1863) 9 B. & S. 121.

(*c*) *Foley* v. *Hill*, (1848) 2 H. L. C. 28 ; *Pott* v. *Clegg*, (1847) 16 M. & W. 321 ; *Joachimson* v. *Swiss Bank Corporation*, (1921) 3 K. B. 110 ; see *Garnett* v. *M'Kewan*, (1872) L. R. 8 Ex. 10 ; *Robarts* v. *Tucker*, (1851) 16 Q. B. 560, 595 ; *Dharam* v. *Ganga*, 29 All. 773, 775 ; *Bradley* v. *Agra Bank*, 101 P. R. 1885 ; *Official Assignee of Madras* v. *Ramachandra*, 33 Mad. 134, 141.

(*d*) *Rolin* v. *Steward*, (1854) 14 C. B. 595 ; see *Marzetti* v. *Williams*, (1830) 1 B. & Ad. 415 ; *Prehn* v. *Royal Bank of Liverpool*, (1870) L. R. 5 Ex. 92 ; *Fleming* v. *Bank of New Zealand*, (1900) A. C. 577 ; *Sridhar* v. *Tyrwhitt*, (1901) A. W. N. 113.

Sec. 31.

the customer and the banker can always be put an end to or modified by either party. Therefore, where, after the Bank, having decided not to have dealings with the plaintiff, offered to repay the plaintiff the balance of amount due to him on the accounts, the plaintiff draws a cheque on the Bank, it is not liable for dishonouring the same. (*a*) When again moneys deposited with a banker are specially appropriated by the customer to some particular purpose or when the banker is constituted a trustee or bailee of the moneys by any special circumstances (*b*), then this obligation can no longer arise. This relationship creates also a duty owing by the customer to the banker. Apart from contract or course of dealings between the parties, the duty on the customer is that he must take reasonable care not to mislead the bank. For any negligence in the discharge of his duty, the customer may be held responsible. (*c*) But the negligence must be negligence in or reasonably connected with the transaction itself. The question as to what constitutes negligence, is one of fact to be arrived at by a consideration of the surrounding circumstances. Where a firm entrusted its clerk with a cheque without writing the sum in words and with space on each side of the sum written in figures, and the clerk inserted figures and words so as to make the cheque one for a larger sum and presented the cheque for payment at the firm's bank, it was held that the firm had been guilty of a breach of the special duty arising from the relation of banker and customer to take care in the mode of drawing of the cheque, that the alteration in the amount of the cheque was the direct result of that breach of duty and that the bank was therefore entitled to debit the firm's account with the full amount of the cheque. (*d*) Leaving a space to the right of the payee's name between that and the words "or order," is not a breach of the duty of care. (*e*)

'Sufficient funds'.

A cheque purports to be drawn upon a deposit in the hands of the banker; ordinarily, the funds so applicable are the customer's current deposit account; but, where a banker has securities in his hands, though the cash balance is against the customer, he will be held liable when in a previous course of a similar dealing, cheques had been honoured. (*f*) It is a good defence for a banker to plead that before the cheque was presented, he had applied the money to the payment

(*a*) *Bradley* v. *Agra Bank*, 101 P. R. 1885.

(*b*) *Official Assignee of Madras* v. *Ramachandra*, 33 Mad. 134, 145, 154, 196, 299; *Official Assignee of Madras* v. *Lupprian*, 34 Mad. 121, 125, 128; *Dorabji* v. *Muncherji*, 19 Bom. 352.

(*c*) *London Joint Stock Bank* v. *Macmillan and Arthur*, (1918) A.C. 777, 814.

(*d*) *London Joint Stock Bank* v. *Macmillan and Arthur*, (1918) A. C. 777 reversing *Macmillan* v. *London Joint Stock Bank Ltd.*, (1917) 2 K. B. 439.

(*e*) *Slingsby* v. *District Bank Ltd.*, (1931) 47 T. L. R 587.

(*f*) *Cumming* v. *Shand*, (1860) 29 L. J. Ex. 129.

Sec. 31. of the customer's acceptance made payable at the banker's, that being of itself sufficient authority to make such a payment. (*a*)

The banker must have reasonable time to carry money paid into the customer's account, and if the requisite funds were paid in so short a time before the dishonour of the cheque, that the banker could not with the exercise of reasonable diligence ascertain the state of the accounts between them, the banker would be excused for such dishonour. (*b*) Four hours have been held to be reasonable time. (*c*) This time is necessary to the banker to satisfy himself as to the genuineness of the signatures on the instrument presented. When a customer pays into his banker's in the ordinary way a cheque drawn upon them by another of their customers, the bankers are entitled to the same time for ascertaining whether the cheque will be paid or not, as in the case of a cheque drawn upon another banker. (*d*)

Under the section, in order to maintain an action against the drawee of a cheque for refusing to honour it, the drawee must have had sufficient funds of the customer in his hands. If the cheque is for an amount greater than that in the hands of the banker, then there is no duty cast on him to honour the cheque even to the extent of the sum in his hands. But if there be a contract between him and the drawer to honour the cheque even without sufficient funds, and the banker dishonours, he will be liable in an action by the drawer for breach of the contract. (*e*) If a customer has an account in a bank having several branches, the branches at which he has no accounts are justified in refusing to honour his cheques, (*f*) since locality is an essential part of the debt owing by a banker to his customer, and his obligation to pay is limited to the place where the account is kept; and the customer having an account at one branch is not entitled to demand of another branch, payment of the balance due on the account at the former branch and upon refusal to pay, to sue the bank without having made any request to pay or to remit the balance to the latter branch. (*g*) It has further been held that a garnishee order issued to an English Bank with foreign branches cannot extend to and

---

(*a*) *Kymer* v. *Lawrie*, (1849) 18 L. J. Q. B. 218; Cf. *Bransby* v. *East London Bank*, (1866) 14 L. T. 463; *Robarts* v. *Tucker*, (1851) 16 Q. B. 560.

(*b*) *Whitaker* v. *Bank of England*, (1835) 1 Cr. M. & R. 744, 749; *Robarts* v. *Tucker*, (1851) 16 Q. B. 560.

(*c*) *Marzetti* v. *Williams*, (1830) 1 B. & Ad. 415; but see *Bank of England* v. *Vagliano*, (1891) A. C. 107, 157, per Lord Macnaghten.

(*d*) *Boyd* v. *Emmerson*. (1834) 2 A. & E. 184; see *Mowji Shamji* v. *The National Bank of India*, 25 Bom. 499, 516.

(*e*) *Fleming* v. *Bank of New Zealand*, (1900) A. C. 577.

(*f*) *Woodland* v. *Fear*, (1857) 7 E. & B. 519.

(*g*) *Clare and Co.* v. *Dresdner Bank*, (1915) 2 K. B. 576; *Joachimson* v. *Swiss Bank Corporation*, (1921) 3 K. B. 110.

affect possible balances to the credit of the judgment debtor at its foreign branches on the ground that the promise to repay the balance is local; and the remedy available in an English court for refusal to pay in a foreign place is by an action in damages for breach of contract and not for debt. (*a*) Branches of the same banking company in different places may be said to be distinct for many purposes. They may give notice of dishonour to each other, (*b*) and a cheque by one, when cashed by another may be considered as transferred and not paid. (*c*) The bank, is however, entitled to combine the accounts of the customer in the various branches against him, if all the accounts kept by him are in the same right. (*d*) Bankers have thus a general lien on all moneys of their customers and on all goods and securities in their hands belonging to their customers in respect of the general balance of account, and a lien even against the true owners on bills and notes payable to bearer, although the customer who deposited them was not the real owner and had no authority to create a lien. (*e*) But when there is a contract to the contrary or when the goods are deposited for a particular purpose or when the banker knows that they belong to a third person, the lien no longer exists. (*f*)

"*Properly applicable*".—These words would include a case where there is a contract between the banker and the customer regulating the banker's liability to honour the cheque. If the customer draws a cheque contrary to such understanding, the banker is entitled to refuse payment, as payment under such circumstances will not be a proper application of the money. A banker is justified in refusing to honour a cheque drawn in breach of trust. He must not knowingly be a party to the application of trust moneys to any purpose inconsistent with the trust affecting them, even at the mandate of his customer, who has to his knowledge become the owner of the funds in a fiduciary character. (*g*) A banker should not honour a cheque or make any particular application of a balance when he knows that by doing so, he

---

(*a*) *Richardson* v. *Richardson*, (1927) P. 228.

(*b*) *Clode* v. *Bayley*, (1843) 12 M. & W. 51; *Fielding Co.* v. *Corry*, (1898) 1 Q. B. 268; *Raja Joyti Prasad* v. *Chota Nagpur Banking Association*, 8 Pat. 413.

(*c*) *Woodland* v. *Fear*, (1857) 7 E. & B. 519.

(*d*) *Garnett* v. *M'Kewan*, (1872) L. R. 8 Ex. 10. See *Prince* v. *Oriental Bank Corporation*, (1878) 3 A. C. 325, 333.

(*e*) *Brandao* v. *Barnett*, (1846) 3 C. B. 519; *London Chartered Bank of Australia* v. *White*, (1879) 4 A. C. 413; *Johnson* v. *Robarts*, (1875) 10 Ch. App. 505.

(*f*) *Cuthbert* v. *Robarts Lubbock & Co.*, (1909) 2 Ch. 226.

(*g*) Hart on 'Banking' (3rd Edn.) 159 to 175; Ex parte *Kingston*, (1871) L. R. 6 Ch. App. 632, *Collinson* v. *Lister*, (1855) 7 De G. M. & G. 634, 637; *Magnus* v. *Queensland National Bank*, (1888) 37 Ch. D. 466; Cf *Thomson* v. *Clydesdale Bank Ltd.*, (1893) A. C. 282; *Union Bank of Australia Ltd.* v. *Murray Aynsley*, (1898) A. C. 693.

Sec. 31.

will be participating in a fraud. (*a*) If the banker is privy to a fraud or breach of trust, then he is liable to refund to the estate any amount of loss sustained by it on account of the fraud. (*b*) Where, however, no loss had occurred to the estate defrauded, either because the money went to discharge the creditors of the estate (*c*) or because other moneys belonging to the estate had been put into by that person sufficient to cover the amount of the fraudulent cheque, (*d*) the banker is not liable on equitable principles on the ground that there is really no loss. The banker is not, however, bound to inquire whether the cheques drawn in proper form by the trustee in favour of a third party are conversions of the funds to his own use, and he may presume that the act of the trustee is in the course of lawful performance of his duty, and honour them accordingly. (*e*) Similarly, where a series of cheques were drawn fraudulently, payable to one of the Directors of a company by the Director jointly with the secretary-treasurer and after indorsement were placed to the credit of the Director with the respondent bank, who collected the same in the usual course of business, it was held, in a suit by the company against the bank, that it could not recover as the bank had not knowledge, either by the form of the cheques, or otherwise, that they were improperly drawn on the company's account and therefore, it could not recover the money as having been held by the bankers in trust for them. (*f*) In the case of partnership deposit, as a rule, it should be paid out only upon a cheque drawn and signed in the partnership's name, and any member of the firm is empowered to make such signature, though the bank may refuse to recognise the signature of a dormant partner, unless it knows, or should have known him to be a partner. (*g*) One of the executors or administrators may draw cheques on a deposit to the credit of himself and other executors ; but in the case of trustees the signature of all would be generally necessary, as their power to act is conferred upon them jointly. In the case of deposits by a Corporation, the banker should ascertain from the charter or bye-laws or other information, or on failure of any of these, by the usage of the institution, what officers are competent to draw cheques. It should

---

(*a*) *Bank of New South Wales* v. *Goulburn Valley Butter Company Ltd.*, (1902) A. C. 543 ; *Cunliffe Brooks & Co.* v. *Blackburn and District Building Benefit Society*, (1884) 9 A. C. 857 ; *Gray* v. *Johnston*, (1868) L. R. 3 H. L. 1.

(*b*) *British America Elevator Co.* v. *Bank of Br. North America*, (1919) A. C. 658 ; *John* v. *Dodwell & Co.*, (1918) A. C. 563.

(*c*) *Liggett* v. *Barclays Bank*, (1928) 1 K. B. 48.

(*d*) *Corporation Agencies* v. *Home Bank of Canada*, (1927) A. C. 318.

(*e*) Cf. *Coleman* v. *Bucks and Oxon Union Bank*, (1897) 2 Ch. 243.

(*f*) *Corporation Agencies* v. *Home Bank of Canada*, (1927) A. C. 318

(*g*) Hart on 'Banking' (3rd Edn.) 146, 147 ; *Cooke* v. *Seeley*, (1848) 2 Ex. 746, 749.

further appear on the face of the cheque that it was drawn by the officer or officers competent to draw on behalf of the Corporation. **Sec. 31.**

A cheque presented and paid is no evidence of money lent or advanced by the banker to the customer (*a*); on the other hand, it is *prima facie* evidence of the repayment of money previously lodged by the customer in the banker's hands. (*b*) A cheque once drawn but not presented is not evidence of money previously lent to the drawer by the payee (*c*); and a mere production of a cheque drawn by the debtor in favour of the creditor and paid by the banker is no evidence of payment but must be shown that the cheque passed through the creditor's hands, so that it is prudent to cause the payee to write his name across the cheque. (*d*)

"*When duly required so to do*," that is, when it is duly presented for payment by the holder. So the banker will not be liable if the cheque is not presented for payment within banking hours. When a banker without paying returns a cheque presented for payment, with a request to re-present it subsequently, the holder may treat it as dishonoured. (*e*) If a number of cheques be presented during the day, it is the duty of the bank to pay according to the priority of the presentment. (*f*) When a number of cheques are presented at once aggregating in gross amount beyond the funds of the drawer, it is submitted that the bank will be justified in refusing to pay any.

Liability of whom?

It is to be noted that the section makes the drawee banker liable to the drawer only. It is on the principle that the drawing of a cheque does not by itself operate as an assignment of money in the hands of the banker in favour of the payee. (*g*) So, the holder of a cheque has no right to enforce payment from the bank. (*h*) There are two exceptions however to this rule:—(1) When the holder commits *laches* in presentment and the bank fails, then he may himself prove the debt in bankruptcy, (*i*) and (2) when a banker pays a cheque without due regard to crossing, in which case he is liable to the true owner for any loss occasioned thereby. (*j*)

(*a*) *Fletcher* v. *Manning*, (1844) 12 M. & W. 571.

(*b*) *Pott* v. *Clegg*, (1847) 16 M. & W. 321.

(*c*) *Pearce* v. *Davis*, (1834) 1 Moo. & R. 365.

(*d*) *Egg* v. *Barnett*, (1800) 3 Esp. 196.

(*e*) *Bank of England* v. *Vagliano*, (1891) A. C. 107, 141, 157.

(*f*) *Kilsby* v. *Williams*, (1822) 5 B. & Ald. 815.

(*g*) *Hopkinson* v. *Forster*, (1874) L. R. 19 Eq. 74; *Schroeder* v. *Central Bank of London*, (1876) 34 L. T. 735; In re *Beaumont*, (1902) 1 Ch. 889; *Benares Bank* v. *Pirya Das*, (1930) All. 106. *Cf.* B. of Ex. Act, secs. 55 (1) and 75.

(*h*) *Auchteroni & Co.* v. *Midland Bank, Ltd.*, (1928) 2 K. B. 294.

(*i*) Sec. 84, *post*.

(*j*) Sec. 129, *post*.

Sec. 31.

But if the holder presents the cheque and procures it to be certified, or the banker promises to place it to his credit or if he holds any other species of conversation which practically amount to a demand and receiving a promise of transfer of credit as equivalent to an actual payment, the effect will be the same, as if he had received the money in cash, and the banker's indebtedness to him will be equally full and irrevocable. (*a*) The same will be the result if money is paid into the bank by the drawer of the cheque to meet a particular bill and the bank assents to the same; and the holder may sue the bank for the amount. (*b*) Though, in general, a cheque is not accepted by the banker on whom it is drawn, still there is nothing to prevent him from marking the cheque as good; (*c*) and such marking gives the cheque an additional currency by showing on its face that it is drawn in good faith and on funds available at the hands of the banker, and also by adding to the credit of the drawer that of the banker. (*d*) Where a customer sends to his banker a cheque drawn on him for realisation, he constitutes him his agent for collection; and if the banker credits him with the amount of the cheque in the Pass-book delivered to the customer, that will be taken to be an acknowledgment by the bank that they are the debtors of the customer for the amount; but the banker may, however, prove that the entry was made under a mistake, unless, in the meanwhile, the customer had acted on the representation of the bank, so as to change his position, in which case the bank will be estopped from contending that it is not liable. (*e*) It is said that the present position of the law as to Bank Pass-Books is not satisfactory. An entry in a pass book is not in all cases conclusive, (*f*) and binding on the bank nor on the customer, although the customer in whose favour the entry stands starts with the advantage, that *prima facie* it is an admission by the bank in his favour which cannot in certain cases be rebutted. In order to treat a mere book-entry as a payment, the customer must rely upon and prove either some express previous authority to pay (*g*) or some communication of the making of the entry to the customer and the acting upon by him. (*h*) But, where the manager of a bank without the knowledge of the customer or the bank but with a view to defraud the

Bank Pass-books.

(*a*) *Mowji Shamji* v. *The National Bank of India*, 25 Bom. 499, 515.

(*b*) *Prince* v. *Oriental Bank*, 3 A. C. 325, 334.

(*c*) *Robson* v. *Bennett*, (1810) 2 Taunt 388.

(*d*) *Gaden* v. *Newfoundland Savings Bank*, (1899) A. C. 281; *Imperial Bank of Canada* v. *Bank of Hamilton*, (1903) A. C. 49.

(*e*) *Mowji Shamji* v. *The National Bank of India*, 25 Bom. 499, 515; as to the nature and effect of a Pass-book, see *Devaynes* v. *Noble*, (1816) 1 Mer. 530, 535; Chalmers (9th Edn.) 300.

(*f*) *Shunker Das* v. *Punjab National Bank*, 62 I. C. 472.

(*g*) *Eyles* v. *Ellis*, 4 Bing, 112.

(*h*) *Akrokerri Atlantic Mines Ltd.* v. *Economic Bank*, (1904) 2 K. B. 465, 471.

creditors and cover his own negligence in allowing an overdraft, gave the customer a large credit, and a few days later debited the same amount against him, and where the pass-book was sent to the customer with both the entries of credit and debit and no objection was made to it by the customer, it was held, that the customer was not entitled to take the credit entry in his favour as if it were a payment to him and ignore the debit entry altogether; in fact it was held, it is not a case of payment under a mistake or even a payment at all. (*a*)

Banker's duty to pay, how determined?

The duty and authority of a banker to pay a cheque drawn on him by a customer are determined :—

(1) By countermand of payment: (*b*) Countermand is really a question of fact. It means not only a change of purpose on the part of the customer, but also the notification of that purpose to the bank. There is no such thing as a constructive countermand in a commercial transaction of this kind. A telegram countermanding payment may reasonably, and in the ordinary course of business, be acted upon by the bank at least to the extent of postponing the honouring of the cheque until further enquiry can be made. (*c*) But the bank is not bound as a matter of law to accept an unauthenticated telegram as sufficient authority for the serious step of refusing to pay the cheque. (*d*) The instruction to stop payment must be clear, and if there is any ambiguity therein and if the bank acts according to the written instructions, it is not liable. (*e*) If in spite of the countermand or in forgetfulness of the same, the bank paid the holder of the cheque, it cannot, subsequently on finding out the mistake, demand repayment from the holder, as in such a case there is no equitable right of restitution, (*f*) whatever his rights may be as regards the drawer of the cheque. Where a customer paid to a bank a sum of money with instructions that it should be placed to an account on which the customer's agent may draw for the purpose of his business and where the banker placed the amount to an account which he opened in the agent's private name and when eventually the agent was dismissed and the banker was called upon to transfer the balance to another account, it was held in an action by the customer against the banker that the latter was not justified in opening an

(*a*) *British & North European Bank* v. *Zalzstein*, (1927) 2 K. B. 92.

(*b*) *Wienholt* v. *Spitta*, (1813) 3 Camp. 376; *Twibell* v. *London Suburban Bank*, (1869) W. N. 127; Cf. *Cohen* v. *Hale*, (1878) 3 Q. B. D. 371; *M'Lean* v. *Clydesdale Bank*, (1883) 9 A. C. 95.

(*c*) *Lalla Mal* v. *Kesho Das*, 26 All. 493.

(*d*) *Curtice* v. *London City and Midland Bank*, (1908) 1 K B. 293.

(*e*) *Westminster Bank* v. *Hilton*, (H. L.) (1926) W. N. 332.

(*f*) *Punjab Industrial Agency Ltd.* v. *Mercantile Bank of India*, (1930) Lah. 852; *Chambers* v. *Miller*, (1862) 32 L. J. C. P. 30.

Sec. 31. account in the agent's private name, the instruction being to allow him to draw on a sum provided by the principal and even otherwise the principal retains the power, if he rightly determines the agency, to require the bank to return the undrawn balance to him, when the principal places money in a bank on the terms that a known agent shall draw upon it. (*a*)

(2) By notice of the customer's death : for it is said that at the instant of his (drawer's) death, the title to the balance vests in his legal representative, and his own order is not competent to withdraw any part of that which is no longer his property ; (*b*) but if the banker pays the cheque before notice of death, it will be valid. (*c*) Any cheque given as a gift must be presented for payment by the donee before the drawer's death to entitle him to receive the amount, (*d*) because, he cannot sue the drawer's executors, not being a holder for value, and the banker's authority to pay is determined by notice of the drawer's death. But if value is given for the cheque, he can sue the legal representative of the drawer. (*e*) On the same principle, a gift *mortis causa* of the donor's cheque is void unless the cheque is cashed, (*f*) during his lifetime. The gift cannot be said to be valid because it has been presented for payment to the bank during the donor's lifetime, (*g*) or is negotiated for value to a third person. In the latter case, if the banker refuses to pay, the transferee has a right of action against the legal representatives of the deceased donor. If the donor instead of giving his own cheque gives the cheque of a third person though the cheque is unindorsed, the gift is good. (*h*) But, when in a firm of two or more partners having an account in the name of the firm, one of them dies, the power of the surviving partners to draw cheques is not put an end to. (*i*)

(3) By customer's bankruptcy : (*j*) A banker can decline to honour his customer's cheque as soon as he has notice of an available act of bankruptcy committed by the customer, since otherwise he may

---

(*a*) *Societe Coloniale, etc.* v. *London and Brazilian Bank, Ltd.*, (1911) 2 K. B. 1024.

(*b*) Morse on " Banking " 260.

(*c*) B. of Ex. Act, sec. 75 ; *Tate* v. *Hilbert*, (1793) 2 Ves. 111 ; *Rogerson* v. *Ladbroke*, (1822) 1 Bing. 93 ; In re, *Beaumont*, (1902) 1 Ch. 889, 894.

(*d*) *Swinburne*, In re, *Sutton* v. *Featherley*, (1926) 1 Ch. 38 ; *Tate* v. *Hilbert*, (1793) 2 Ves. 111, 118 ; *Hewitt* v. *Kaye*, (1868) L. R. 6 Eq. 198 ; *Beak* v. *Beak*, (1872) L. R. 13 Eq. 489 ; Hart on " Banking " (3rd Edn.) 329.

(*e*) *Cf.* Chalmers (9th Edn.) 294.

(*f*) *Rolls* v. *Pearce*, (1877) 5 Ch. D. 730.

(*g*) *Swinburne*, In re, *Sutton* v. *Featherley*, (1926) 1 Ch. 38, 47 ; In re, *Beaumont*, (1902) 1 Ch. 889.

(*h*) *Clement* v. *Cheesman*, (1884) 27 Ch. D. 631.

(*i*) *Backhouse* v. *Charlton*, (1878) 8 Ch. D. 444.

(*j*) *Mathew* v. *Sherwell*, (1810) 2 Taunt. 439 ; Ex parte *Wolverhampton Banking Co.*, In re, *Campbell*, (1884) 14 Q. B. D. 32.

Sec. 31.

be compelled to pay over again to the trustee. (*a*) But when an account was opened in the name of the wife under an arrangement that the husband should initial the cheques of the wife, and some months subsequent to the receiving order, the trustee obtained a declaration that the account was that of the bankrupt and the balance then standing to the credit of that account was paid over to the trustee by the bank, it was held that the bank was not liable to the trustee for the amount of cheques drawn by the wife between the date of the receiving order and the date of the declaration, since, until such declaration, the bank was bound to honour their customer's cheques; and as between the bank and its customer the account was that of the wife in spite of the arrangement which cannot certainly be regarded as indicative of the right of the husband to the control of the funds, but merely an arrangement capable of determination at any moment by the wife. (*b*)

(4) By notice of the customer's lunacy. (*c*)

(5) By garnishee or other legal order attaching, or otherwise dealing with, the money in the banker's hands. (*d*) If the banker honours any cheque after the order has been served on him, he does so at his own risk. But where a garnishee order is served on the drawer of a cheque between its delivery for value and its payment, there is no obligation on him to stop the payment. (*e*) But if a cheque be given in respect of a debt accruing due after service of a garnishee order *nisi*, and the amount is allowed to be paid, the garnishee will be held liable to pay over again to the creditor. (*f*) Besides these cases, it is submitted that a bank should not pay a cheque after notice of its loss.

Damages for dishonour.

If the drawee fails to honour a cheque when he is bound to do so under the section, he must compensate the drawer for any loss or damage caused by such default. The principle on which such compensation is to be assessed is not indicated in the Act, for section 117 refers only to cases of compensation to the holder or indorser. Under the English law, it is not necessary to prove that any actual damage has been sustained, for, the dishonour of a cheque by the banker while having sufficient funds in his hands, is a damage in law; as Lord Tenterden says: "It is a discredit to a person and therefore injurious

(*a*) *Vernon* v. *Hankey*, (1787) 2 T. R. 113 at 119.

(*b*) Re *Montague*, Ex parte *Ward*, (1897) 76 L. T. 203.

(*c*) *Drew* v. *Nunn*, (1879) 4 Q. B. D. 661; *Daily Telegraph Newspaper* v. *Loughlin*, (1904) A. C. 776.

(*d*) *Rogers* v. *Whiteley*, (1892) A. C. 118; *Yates* v. *Terry*, (1902) 1 K. B. 527. Cf. *Norton* v. *Yates*, (1906) 1 K. B. 112.

(*e*) *Elwell* v. *Jackson*, (1884) Cab. and E. 362.

(*f*) *Edmunds* v. *Edmunds*, (1904) P. 362.

Sec. 32.

in fact to have payment refused of a draft, for so small a sum, for it shows that the banker had very little confidence in the customer: it is an act particularly injurious to a person in trade." (*a*) The "loss or damage" in the section means not only pecuniary loss, but also damage to reputation. When the drawer has not sustained any actual damage, he may recover nominal damages under the section. (*b*)

Liability of maker of note and acceptor of bill.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of the bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

NOTES.

Liability of maker of the note.

The section speaks of the liability of the maker of a note and the acceptor of a bill of exchange. So far as the drawee of a cheque or bill is concerned he is not liable on it, for he is not a party thereto. The drawee may make himself a party by accepting the instrument. (*c*)

The acceptor of a bill of exchange by accepting it engages that he will pay it according to the tenor of his acceptance, and the effect of such acceptance is to make the acceptor primarily liable to pay the bill and to render the drawer and the indorsers liable as sureties in case of default. (*d*) This liability of the acceptor when once fixed cannot cease by reason of the bankruptcy or the death of the drawer or by any other change in the circumstan-

---

(*a*) *Marzetti* v. *Williams*, (1830) 1 B. & Ad. 415; Cf. *Hopkinson* v. *Forster*, (1874) L. R. 19 Eq. 74, 76; *Rolin* v. *Steward*, (1854) 14 C. B. 595.

(*b*) *Prehn* v. *Royal Bank of Liverpool*, (1870) L. R. 5 Ex. 92; *Fleming* v. *Bank of New Zealand*, (1900) A. C. 577.

(*c*) *Benares Bank Ltd.* v. *Pirya Das*, (1930) All. 106.

(*d*) *Smith* v. *Knox*, (1799) 3 Esp. 46.

ces of the other party. When a draft of a bill of exchange was drawn against goods and if the contract is that payment is to be made by such draft, the latter is bound to accept the draft upon tender of the proper document. This he must do even though the goods be lost or destroyed at the time of presentment, for the delivery he is entitled to against payment is not of the goods but of that symbol such as bills of lading, charter-party, invoice and policy of insurance. (*a*) When once he has accepted them, the fact that by reason of the intervention of war or such like cause, he cannot obtain delivery of the goods, is no defence to a suit on the draft. (*b*) The only defence open to him is that the documents tendered were not the proper documents, (*c*) or perhaps that the bill of lading or the other documents were forged. But this defence is certainly not open against a *bona fide* indorsee for value. (*d*) The bill by acceptance becomes very similar to a promissory note, the acceptor being the maker, and the drawer standing in the relation of an indorser. Since the acceptance assumes an obligation to pay the bill, it involves also everything essential to the existence of such liability, that is, that the drawer has capacity to draw, (*e*) that he has funds of the drawer in his hands, and that the payee is a person capable of indorsing, for by acceptance he agrees to pay to his order. (*f*) In addition to these, under the English law, the acceptor is said by his acceptance to admit the genuineness of the signature of the drawer; but under the Indian law, the acceptor may deny that the bill was really drawn by the person by whom it purports to be drawn. (*g*) Moreover, if the bill or note purports to be drawn by the agent of the drawer, the acceptance by the drawee involves an admission of such agent's capacity and authority; but such acceptance cannot be said to admit the genuineness of the signature of the agent, though it is otherwise under the English law. But if the acceptor knows at the time of the acceptance that an indorsement is forged, he cannot subsequently set up the forgery of such indorsement to escape liability. (*h*) Though forgery is incapable of ratification, if the drawee has once admitted a forged acceptance as his own, he cannot after-

Acceptor's contract.

(*a*) *Bubby Hurry & Co.* v. *M. Hertzy & Co.*, 4 Lah. 215.

(*b*) *Motishaw & Co.* v. *The Mercantile Bank of India*, 41 Bom. 566.

(*c*) *Gopal Chand* v. *Sir Jacob Behrens & Sons*, (1930) Lah, 640. But see *Arnold Karberg & Co.* v. *Blythe Green etc. Co.*, (1915) 2 K. B. 379; *Duncun Fox & Co.* v. *Schrempft & Bonke*, (1915) 3 K. B. 355, where such tender was said to be good, but the action was one for price and not for negotiable instrument.

(*d*) *Robinson* v. *Reynolds*, (1841) 2 Q. B. 196; *Thiedemann* v. *Goldschmidt*, (1859) 1 De. G. F. & J. 4; *Leather* v. *Simpson*, (1871) L.R. 11 Eq. 398 at 405.

(*e*) Ind. Evidence Act, sec. 117.

(*f*) Sec. 121, *post*; *Robinson* v. *Yarrow*, (1817) 7 Taunt, 455.

(*g*) Ind. Evidence Act, sec. 117.

(*h*) Sec. 41, *post*.

Sec. 32. wards show that it was forged ; (*a*) but mere silence after knowledge does not operate as estoppel. (*b*)

The acceptor cannot escape by pleading that there is no consideration for the acceptance ; if there is consideration between the drawee and the payee, that itself is sufficient in law to support the contract with the acceptor and no further consideration is contemplated under section 43. (*c*)

Maker's obligation.

The maker of a promissory note incurs personally the same obligation and stands in the same position as the acceptor of a bill of exchange. He undertakes to pay the money stated in the note at its maturity to the payee or other person entitled to receive the same according to the tenor thereof. He is not bound to pay the note before maturity, and even if he does so, without having it surrendered up to him, he will be liable to any subsequent *bona fide* holder for value without notice, before it becomes due. The moment it is admitted that the maker of a note or acceptor of a bill, made or accepted it, the *onus* is upon him to get rid of his liability. It is not for the person suing on the bill or note, unless he is charged with fraud or some *prima facie* case is made against him, to explain the circumstances at all, and the person who signs a bill is presumed to be liable for the whole amount appearing on the face of the document. (*d*) A person who has signed a promissory note as principal is not entitled to prove by oral evidence that it was intended that he was to be liable as surety only, and when a note contained an unconditional undertaking to pay, evidence of an oral agreement to vary it in effect is not admissible, though the English law allows such parol contracts to be proved by way of equitable defence. (*e*)

The section itself points out a distinction between the liability of a maker of a note and that of an acceptor. While the maker of a note is bound to pay according to the apparent tenor of the note, the acceptor is under no other liability than that created by the acceptance which may, in some cases, be different from the contract as embodied by the drawer in the instrument ; thus, in the case of a qualified acceptance, the acceptor is bound to pay only according to the tenor of the acceptance.

(*a*) *Leach* v. *Buchanan*, (1802) 4 Esp. 226 ; *Barber* v. *Gingell*, (1800) 3 Esp. 60.

(*b*) *M'Kenzie* v. *British Linen Co.*, (1881) 6 A. C. 82, 99 (H. L.) ; *Ogilvie* v. *West Australasian Mortgage and Agency Corporation*, (1896) A. C. 257.

(*c*) *Jogeshchandra* v. *Md. Ibrahim*, 57 Cal. 695.

(*d*) *Nazir Ali* v. *Kherchand*, 36 I. C. 996.

(*e*) *Narasimamurthi* v. *Ramasami Chettiar*, 24 M. L. J. 91. See Appendix B.

Sec. 32.

Even after a bill has become due and payable, there may be a valid acceptance thereof, notwithstanding previous refusal to accept or pay, and in such cases, the section provides that the bill is payable on demand. The reason of the rule is quite plain, for the time limited by the bill having expired, the bill can be discharged by payment at any time.

'Apparent tenor.'

By the use of the words 'apparent tenor', the section makes it clear that payment, in order to be a valid payment, must be made to the person whose name appears on the face of the bill or note as entitled to demand payment; and in the case of acceptance at or after maturity, though the section does not mention the words 'apparent tenor,' as the section makes the amount payable to a holder, *i.e.*, a person entitled in his own name to the possession of the bill, (*a*) the result in this case also is the same. Moreover, it is to be noted that in the latter case, if the holder is not a person deriving title from a holder in due course, his claim will be subject to the equities enforceable against his transferor.

Contract to the contrary.

This liability of the acceptor of a bill, or the maker of a note, is subject to any contract to the contrary. The general rule is that the acceptor of a bill is the primary debtor and the drawer only a surety. But a contract to the contrary may be entered into between these two parties inverting their positions, and such a contract may be proved in proceedings as between them. It is also open to the acceptor to prove that by virtue of a contract between himself and the holder, his liability is that of a surety and not of a principal debtor. But mere notice of his position as an accommodation acceptor is not sufficient to preclude the holder from treating him as a primary debtor. (*b*) The payee of a note if he has made a contract to the contrary with the maker is not entitled to sue on the note unless he has performed the conditions of the contract. The maker can also set up against the payee a subsequent written agreement by the latter not to enforce it. (*c*) Thus, in a contemporaneous written agreement making the amount of a note payable in instalments, it has been held that the contract may be proved. (*d*) It is to be noted that this provision as to the contract to the contrary does not find a place in the previous two sections, but is repeated in section 35. The absence of such a provision in the earlier sections might show that the liability imposed by statute in those sections cannot be controlled by collateral agreements of parties, while the liabilities of the maker of the note or an acceptor, may be

(*a*) Sec. 8, *ante*.
(*b*) *Bellew* v. *Bank of Upper India, Ltd.*, 7 I. C. 727.
(*c*) *Shaikh Imam* v. *Ishak Ali*, 10 I. C. 734; *Annamalai* v. *Velayuda*, 39 Mad. 129 (F.B.).
(*d*) *Nagardas* v. *Moses Arokee*, 12 I. C. 896 (L.B.).

Sec. 32.

controlled by some collateral agreements between the parties. Though the words are general in character, and include all collateral agreements, the phrase is designed specially to meet cases of accommodation bills and notes, for in such cases, there is an implied warranty by the drawer (for whose accommodation the bill was accepted) to indemnify the acceptor against claims which may be made on him in respect of the bill or note, and on this implied warranty, an action will lie by the acceptor against the drawer, if he were obliged to take up the bill at maturity or pay the note when due. (*a*) "It is undoubtedly competent for parties to a bill to contract *inter se*, expressly or impliedly, to alter or even invert the positions and liabilities assigned to them by the Law Merchant. The drawer and acceptor of a bill may agree that, as between themselves, the acceptor shall have the rights of a drawer, and that the acceptor shall be subject to the liabilities of a drawer; and that agreement when proved will be binding upon them both, although it can have no effect upon the obligations to third parties interested in the bill, imposed upon them by the Law Merchant." (*b*) This agreement of accommodation, or other collateral contracts, as will be seen from the above passage, will be binding only between those who are parties to such agreement. And if the bill gets into the hands of a third person who has given value for it, the acceptor will be bound to pay him, notwithstanding the fact that he received no consideration for it, and the holder was aware of that fact; because the very object of the accommodation acceptance is to enable the party accommodated to obtain money on the credit of the acceptor. It is otherwise, however, if the bill was accepted for a special purpose which has been specified, and the holder has notice of it. Accommodation acceptor is not justified in charging the party accommodated even before he pays the holder. His right against the drawer accrues only on his paying the amount under the bill to the holder, and the limitation will run from such date, under Article 79 of the Indian Limitation Act. (*c*)

Accommodation Bill, etc.

Compensation on default.

On committing default, the acceptor of a bill or the maker of a note is liable to compensate not only the holder in whose hands it was dishonoured, but any other party who may have sustained loss or damage by reason of the default. This loss or damage arises to such party on his paying to the holder the amount due upon the bill or note. It is clear that a party, for whose accommodation a note is

---

(*a*) *Nand Ram* v. *Sitla Prasad*, 5 All. 484.

(*b*) *Steele* v. *M' Kinlay*, (1880) 5 A. C. 754, 778 per Lord Watson; see also *Macdonald* v. *Whitfield*, (1883) 8 A. C. 733.

(*c*) Act IX of 1908.

made or a bill is accepted, cannot claim compensation under the section as he can in no way sustain loss or damage by reason of the default, unless in the meanwhile he has supplied the maker or acceptors with sufficient funds to take up the instrument at maturity. (*a*) For the measure of compensation, see section 117, *post*.

It is to be noticed that no notice of dishonour is necessary to charge the acceptor of a bill, or the maker of a note; (*b*) not even presentment for payment to them seems to be necessary. (*c*)

Only drawee can be acceptor except in need or for honour.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

NOTES.

Who can accept?

A bill of exchange, being in its nature a letter of request from the maker to a particular person, no one can be made liable on it but the person to whom it is addressed as the person to accept the bill. (*d*) So, where a bill was addressed by John Hart to 'Mr. John Hart payable to me or order,' and across its face was written 'Accepted H. J. Clarke', it was held that Clarke could not be sued as acceptor, for "acceptance can only be made by a party addressed, or for his honour. Here the last is not pretended and the first cannot be presumed." (*e*) If a bill be addressed to A, an acceptance by B will not bind him as acceptor, and the holder cannot sue him as such. (*f*) Or, if a bill is addressed to one, but is accepted by two persons, the acceptance of the person not named therein is no acceptance at all, though a collateral undertaking by him as a surety may be inferred. (*g*) Thus, where a bill drawn by B on C and D was duly accepted by them and handed over to A, who put his name across the back, and then gave it to B, it was held that A was not an acceptor in any sense of the term and his liability, if at all, can be established only just by

(*a*) Cf. *Pogose* v. *Bank of Bengal*, 3 Cal. 174, 185.

(*b*) Sec 93, *post*.

(*c*) Sec. 64, *post*.

(*d*) *Jackson* v. *Hudson*, (1810) 2 Camp. 447; *Polhill* v. *Walter*, (1832) 3 B. & Ad. 114.

(*e*) *Davis* v. *Clarke*, (1844) 13 L. J. Q. B. 305, per Coleridge, J. *Steele* v. *M'Kinlay*, (1880) 5 A. C. 754, 771; *Mungumal* v. *A. L. V. R. C. T. Firm*, 4 M.L T. 309.

(*f*) *Fielder* v *Marshall*, (1861) 30 L. J. C. P. 158; In re *New Fleming Spinning and Weaving Company, Ltd.*, 3 Bom. 439, 449.

(*g*) *Jackson* v. *Hudson*, (1810) 2 Camp. 447.

Sec. 33.

special contract to be answerable to the drawer and the acceptor. (*a*) If a bill addressed generally to one is accepted by him as agent on behalf of another, the drawee is still personally liable as acceptor. (*b*)

No series of acceptors.

There cannot be a series of acceptors, but if there is no drawee named in the bill and a person accepts such instrument, such acceptance may be regarded as acknowledging that he is the drawee, and in an old case, he was held liable as acceptor. (*c*) Though the soundness of this decision has been questioned, (*d*) and it was said that the decision appeared to go to the extremity of what is convenient, the Calcutta High Court (*e*) has made it the basis of its decision in a case where a document shown to be on its face a hundi or a bill of exchange, but was really a promissory note was accepted by the defendants by writing on a corner at the top "accepted, payable on due date" and signing the same. The learned Judges held that by signifying their acceptance the defendants have admitted themselves to be drawees and so were estopped. It was also pointed out in the case *Davis* v. *Clarke*, (*f*) that there could be no estoppel, as the bill was addressed to a certain person and was not accepted by him but by another.

Acceptance by agent.

This section does not, however, prevent the drawee from accepting a bill drawn on him through the hand of an agent, (*g*) for which see notes to section 27. But it is submitted that the holder is not bound to acquiesce in an acceptance by the agent, for such an acceptance would multiply the difficulties of the holder in proving it; (*h*) it would seem, however, that if the agency was clear, he would be bound to take the agent's acceptance.

By all the drawees.

A bill may be addressed to two or more persons whether partners or not (*i*), but not to one or more of them in the alternative or in succession. In such cases, all the drawees named should accept, and if one or more of them refuse, and some only accept, it will be a qualified acceptance, and the bill may be protested for non-acceptance by the holder at his option; (*j*) if he does not choose so to protest,

(*a*) *Steele* v. *M' Kinlay*, (1880) 5 A. C. 754, 770.

(*b*) *Herald* v. *Connah*, (1876) 34 L. T. (N. S.) 885; *Nicholls* v. *Diamond*, (1853) 9 Ex. 154.

(*c*) *Gray* v. *Milner*, (1819) 8 Taunt. 739

(*d*) *Reynolds* v. *Peto*, (1855) 11 Ex. 418; *Davis* v. *Clarke*, (1844) 6 Q. B. 16. *Cf.* Daniel, sec. 486.

(*e*) *Jogeshchandra* v. *Mahammad*, 57 Cal. 695.

(*f*) (1844) 6 Q. B. 16.

(*g*) *Lindus* v. *Bradwell*, (1848) 5 C. B. 583; *Edmunds* v. *Bushell*, (1865) L. R. 1 Q. B. 97.

(*h*) *Coore* v. *Callaway*, (1794) 1 Esp. 115.

(*i*) *Jackson* v. *Hudson*, (1810) 2 Camp. 447; B. of Ex. Act, sec. 6 (2).

(*j*) Secs. 34 and 86, *post*.

the acceptance of the party accepting the bill will be good so far, and he will be bound; for the section says that all or some of several drawees may validly accept. But, if the persons addressed as drawees are partners of a partnership, it may be accepted by any one of the partners, and his signature will be understood to signify that the firm responds to the request on the bill. If however, the bill is addressed to a firm, and is accepted by a partner in his own individual name, the acceptance cannot bind the firm though the partner will be liable personally, (*a*) or conversely, if the bill is addressed to a partner individually, an acceptance by him even in the name of the firm will not bind it, but him only. (*b*) But an acceptance in its true style by a firm wrongly addressed, is a valid acceptance by the firm. (*c*) But, where a signature is common to an individual and a firm of which he is a member, and a bill is given with the signature of the individual attached, there is a presumption that the bill was given for the firm and is binding on it at least where the individual carries on no other business; but this can be rebutted and it has been held, in a case where in a partnership of B and M, M was a dormant partner and the business was carried on in the name of B alone as ostensible partner, and where B accepted bills of exchange in his own name for his own purposes with the intention not to bind the firm but himself only, it was held that M was not liable on the bills, though the holder may be a *bona fide* holder for value and took the bills as the bills of the partnership. (*d*) Where a person against whom a bill is drawn by name accepts the bill for or on behalf of a Corporation of which he is a member, there is no valid acceptance of the bill. (*e*) The drawee is under no obligation to the holder to accept a bill drawn on him, even though such refusal may be in breach of a contract between the drawee and the drawer. Such contract will however, entitle the drawer to sue the drawee for breach of contract. Very often persons arrange with banks for credit or overdraft for a certain amount, and the banks are liable to the drawer if they do not honour drafts on them within the limit of the credit or overdraft. But, to make them liable, the contract must be clear and definite. Therefore, where M & Co., certain merchants in London opened credit for Rs. 5,000 for one year in favour of their commission agents K & Co. which was to be availed of by K. & Co. by drafts on

(*a*) *Owen* v. *Van Uster*, (1850) 10 C. B. 318; see *Odell* v. *Cormack*, (1887) 19 Q. B. D. 228.

(*b*) *Nicholls* v. *Diamond*, (1853) 9 Ex. 154; *Williams* v. *Thomas*, (1806) 6 Esp. 18 (N. P.)

(*c*) *Lloyd* v. *Ashby*, (1831) 2 B. & Ad. 23; *Bernard*, In re *Edwards* v. *Bernard*, (1886) 32 Ch. D. 447.

(*d*) *Yorkshire Banking Co.* v. *Beatson*, (1880) L. R. 5 C. P. D. 109.

(*e*) *Ibrahim Fazilbhoy* v. *International Banking Corporation*, 27 Bom. L. R. 283.

Sec. 34.

M & Co., against produce bought and paid by K & Co, and to be shipped in two months, which produce was to be under lien to M & Co., until the documents of title are handed over by K & Co., to bankers for transmission to M & Co., it was held that the letter was not an open credit and that M & Co., were entitled to refuse acceptance if the goods had not been brought according to the contract, and that a bank who had negotiated such bills for K & Co., could not make M & Co., liable. (*a*)

If there is a person to whom the holder is directed to resort in case of need, such person may also accept, even without a previous protest. (*b*)

Though the general rule is that there can be no acceptor but the person named in the bill as the drawee, there is a special kind of acceptance, called acceptance for honour or *supra* protest, when a stranger, *i.e.*, a person not a party to the bill may accept the bill for the honour of any party thereto. As to what his rights and liabilities are, see section 108.

Acceptance by several drawees not partners.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

NOTES.

The section lays down that one of the several drawees can validly accept a bill so as to bind him, though he cannot accept so as to bind others. It provides for two instances where one of the several drawees can accept so as to bind another :—(1) in the case of partnership when one partner can accept so as to bind the firm, and consequently another drawee who is a partner, and (2) in the case of agency, when one of the drawees can accept for himself and as agent of another drawee, for which see notes to section 33.

Ratification.

Though according to the strict construction of the section, one of the several drawees must have had previous authority from the other drawee to bind him by his acceptance, it is sufficient if the other drawee ratifies the act of acceptance, though he had not given previous authority, for such ratification relates back to the date of the act of acceptance.

(*a*) *Chartered Bank of India, Australia and China* v. *Macfayden & Co.* (1895) 64 L. J. Q. B. 637.

(*b*) Sec. 116, *post.*

Sec. 35.

Liability of indorser.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

NOTES.

Delivery.

The liability of the indorser laid down in the section cannot arise unless the person indorses and delivers the instrument to the transferee, for no contract on a negotiable instrument is complete without such delivery. In fact, when we speak of indorsing a negotiable instrument, the idea of its being delivered to the indorsee is also assumed. (*a*) This liability arises out of the indorsement of the instrument and not on the instrument itself; so it has been held that if the indorsee kept alive a note by getting part-payment from the maker, the liability of the indorser was not affected thereby and would be barred in the usual course. (*b*) Again, it has been held that in a suit by the indorsee, the right of action is directly dependent on the indorsement, and that forms part of the cause of action so as to give the court of the place of indorsement jurisdiction to entertain a suit, not only against the indorser but also against the drawer (*c*). On the same principle it has been held that a transferor by mere delivery of a negotiable instrument is not liable to a subsequent holder, nor is he entitled in the event of dishonour, to enforce liability against prior party. (*d*)

(*a*) Daniel, sec. 667; *Punjab National Bank* v. *Balkishan*, 6 Lah. L. J. 230.

(*b*) *Jagannadha* v. *Lakshmanna*, 47 M. L. J. 475.

(*c*) *Raghoonath* v. *Gobinda*, 22 Cal. 451; *Mangamma* v. *Sathiraju*, 31 M. L. J. 816; *Subramania* v. *Maung Po Tha*, 11 I. C. 852; *Naraindas* v. *Chanda Ram*, (1928) Sind 86; see also *Official Receiver* v. *Naraindas*, (1926) Sind. 31.

(*d*) *Valjee Karjee* v. *Harsookdas*, 62 M. L. J. 639.

Sec. 35.

Contract of indorser.

The nature of the contract of an indorser is very much like that of the drawer of a bill. The indorsement is equivalent to the drawing of a new bill by the indorser in favour of the indorsee. (*a*) The drawer, as we have seen, undertakes that the bill will be accepted by the drawee when duly required so to do, and paid at its maturity, and that in case of dishonour by non-acceptance or non-payment, he will compensate the holder for any loss or damage suffered by him. The indorser too enters into a similar contract with the indorsee and through him with the subsequent parties that the bill, if unaccepted at the time of indorsing, will be accepted by the drawee when duly presented for it, and that the acceptor or the drawee, as the case may be, will pay the bill at maturity when presented for it. Even the indorsement of a negotiable promissory note operates in contemplation of law, between the parties thereto, as the drawing of a bill of exchange in favour of the indorsee, such indorsement being only a request of the indorser that the maker of the note will pay the amount to the indorsee, or to any holder in due course. (*b*) Thus, there is the undertaking by the indorser, as surety, for the due performance by the acceptor of a bill or the maker of a note of the obligations created by the instrument. So, the indorser, in default of acceptance by the drawee or of payment by the drawer or acceptor, is liable to be sued immediately by the holder. (*c*) This liability of the indorser is not affected by the fact that the holder does not implead the drawer and the acceptor in the same suit, "for a holder having duly presented the instrument and given notice of dishonour is not bound to sue the acceptors or the drawers before he sues his immediate indorser; he has a right at once to sue the indorser." (*d*) The holder has thus got his option to select his defendant, and a decree obtained against any one is no bar to a suit against another of them. (*e*) It has been held that a decree containing a condition exempting the indorser from liability until the plaintiff-holder has exhausted his remedies against the drawer and the acceptor is illegal. (*f*)

Further, the indorser of a negotiable instrument is precluded from denying to a holder in due course the genuineness and regularity, in all respects, of the drawer's signature and all previous indorse-

---

(*a*) *Gibbs* v. *Fremont*, (1853) 9 Ex. 25, 31; see also *Lebel* v. *Tucker*, (1867) L. R. 3 Q. B. 77 at 81.

(*b*) *Muhammad* v. *Ranga Rao*, 24 Mad. 654, 656.

(*c*) *Jumna Dass* v. *Mehur Singh*, 1 Agra 182; see notes to sec. 30, *ante*.

(*d*) *Gopal Dass* v. *Seeta Ram*, 3 Agra 268; *Somasundaram* v. *Lakshman*, 17 I. C. 951.

(*e*) *Pogose* v. *Bank of Bengal*, 3 Cal. 174; *Basant Ram* v. *Kolahal*, 1 All. 392; *Appasami* v. *Ramanatham* 30 Mad. 167; *Ramanjulu* v. *Aravamudu*, 33 Mad. 317.

(*f*) *Bank of Bengal* v. *Kartick Chunder*, 16 Cal. 804.

ments; (*a*) and also from denying to his immediate or subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill and that he had then a good title and right to indorse. (*b*) Where a person indorses a bill or a note for accommodating another, the party accommodated cannot maintain a suit against the indorser. So also an indorsee for collection cannot sue his indorser,(*c*) although the indorser cannot escape liability to a holder for value. (*d*)

Notice of dishonour to indorser.

As in the case of a drawer, in order to charge the indorser, due notice of dishonour should be given to him by the holder, or the indorser should at least have received notice from some party liable on the instrument. (*e*) The omission to give due notice of dishonour, discharges the maker and the indorser without proof that their eventual remedy against their principal debtor is impaired. The fact of the bill being dishonoured and the intimation thereof being given to the indorser are conditions precedent to his being made liable. (*f*) Where a bill was lost and no action was taken under section 45-A or section 81, but the holder sued his immediate indorsee on the original consideration and obtained satisfaction, the circumstance cannot justify such immediate indorser to sue the parties above him. (*g*) If the instrument creating the suretyship contains a clause that the surety shall be liable notwithstanding acts done by the creditor which would release him, such a clause has been held to be valid and operative in English law. (*h*) How far the principle is to be applied in India and to negotiable instruments is not easy to decide. There is however, nothing in the Act which prevents such a clause being inserted in an indorsement. Even under the Indian Mercantile law, reasonable notice of dishonour, though not immediate notice, was essential to charge the indorser of a hundi. (*i*) After the passing of the Act, the rule laid down in the Act applies also to hundis, in the absence of any usage to the contrary.

The indorser is bound, in case of dishonour, not only to pay the amount mentioned in the bill, note or cheque, but also to compensate the holder. The compensation will have to be determined according to the rules in section 117.

(*a*) Sec. 122, *post*; B. of Ex. Act, sec. 55 (2) (b).

(*b*) B. of Ex. Act, sec. 55 (2) (c).

(*c*) *Lloyd* v. *Howard*, (1850) 15 Q. B. 995.

(*d*) *Smith* v. *Knox*, (1800) 3 Esp. 46.

(*e*) See notes to sec. 93, *post*.

(*f*) *Jagannadha* v. *Lakshmanan*, 47 M. L. J. 475; *Kadappa* v. *Tirupathi*, 21 L. W. 210 (a letter from a resident at the place of the drawee intimating presentment and dishonour, was held not legal proof.).

(*g*) *Sanehi Lal* v. *Onkar Mal*, 18 A. L. J, 981.

(*h*) *Perry* v. *National Provincial Bank of England*, (1910) 1 Ch. 464.

(*i*) *Megraj Jagannath* v. *Gokaldas*, 7 Bom. H. C. R. 137 (O. C. J.).

Sec. 35.

This section must be read along with section 88 of the Act, which lays down that an indorser is bound by his indorsement notwithstanding any previous alteration of the instrument. This is on the principle that the contract of the indorser is that he will compensate the holder, if the instrument is not accepted and paid according to its tenor at the time of his indorsement and not according to its tenor at the time of the original drawing, if its effect has been varied by an alteration or by a qualified acceptance. (*a*)

Indorser after dishonour.

This section does not govern the extent and nature of the liability of the indorser of a note payable on demand. (*b*) It has, however, been held that the holder of a pronote payable on demand indorsed after dishonour is not entitled to a decree against the indorser (the payee) without giving him a proper notice of dishonour. (*c*) The principle of the decision, is however, not clear as from the statement of the facts of the case, it is obvious that it is the indorser who presented the instrumeut for honour, and a notice to him of dishonour is a superfluity. The learned judge, however, bases his decision on the fact that for notes payable on demand there is no maturity under section 22, and that section 93 is imperative in requiring notice.

The last paragraph of the section is somewhat ambiguous ; all that it means to lay down is that a person indorsing a dishonoured bill or note is liable as upon an instrument payable on demand. There is no provision in this section, or anywhere else in the Act to cover a case of a person indorsing after maturity an instrument not dishonoured. This can arise only in a case where the holder of the instrument commits *laches* in presentment for payment and indorses it to another after the due date. Such a case is specially provided for by the Bills of Exchange Act. (*d*) Under the English and the American law, such an indorser is liable as if he indorsed an instrument payable on demand, and his liability is conditional on a presentment for payment and notice of dishonour in the event of a non-payment within a reasonable time. (*e*)

Contract to the contrary.

The liability of an indorser may be controlled by a contract to the contrary, or it may be excluded, or made conditional by a provision in the indorsement itself. *e.g.*, by indorsing '*sans recourse*.' As to how such a liability can be excluded, or made conditional in the indorsement itself see notes to section 52, *post*. Though a commission-agent through whom a hundi is bought, is liable to the purchaser for

(*a*) Chalmers (9th Edn.) 218.

(*b*) *Jagannadha* v. *Lakshmanan*, 47 M. L. J. 475 ; 59 M. L. J. (N. R. C.) 44 ; see *Sivarama* v. *Moideen*, 33 Mad. 34.

(*c*) *Hemadri* v. *Seshamma*, (1931) Mad. 113.

(*d*) Sec. 10 (2).

(*e*) Daniel, sec. 611.

the amount of the hundi when he is the payee and indorser of the same, it has been held that he may prove that his name was entered in the hundi benami ; and then his liability is excluded by mercantile usage. (*a*) It is open to the indorser to adduce oral evidence of a contract to the contrary. He may also prove that the indorsee orally agreed to recover the amount of the promissory note from the estate of the drawer only. (*b*)

Between the indorsers, the rule no doubt is that their liability is in the order in which their names appear on the instrument. But, this rule may be reversed by proof of the real intention of the parties. Parol evidence is admissible to show this intention, and this does not conflict with the rule that oral evidence is not admissible to contradict or vary the terms of a written contract, for the liability of the indorser is one implied by law and can be qualified by proof of a different agreement. Therefore, a prior indorser may recover against a subsequent one on proof of agreement to that effect ; and it is said that where a second indorser put his name above the first by mistake or inadvertence he may, if he is himself called upon to pay, recover the amount from the first indorser. In all cases where the indorser indorses the instrument for the accommodation of the indorsee, the latter cannot sue him, as there is in that case a contract to the contrary. (*c*) He may prove that as between himself and the indorsee, there was an agreement, express or implied, to exclude himself from personal liability. (*d*)

Indorser of non-negotiable bill or note.

The operation of the section is, as will be seen, confined to negotiable instruments. What is the position of a person indorsing a non-negotiable instrument? In England, it seems that if the payee indorses a bill not negotiable, he is liable on his indorsement to his indorsee, (*e*) as every indorser of a bill is in the nature of a new drawer. (*f*) This reasoning cannot apply to non-negotiable promissory notes, as the indorser of a promissory note, cannot be treated as if he were the maker of the note. (*g*) Moreover, the stamp on the original instrument having been exhausted by the drawing or the making of a bill or note, it would seem that fresh stamp would be necessary for the indorsement. (*h*) It is difficult to say what will be the effect of such an indorsement in Indian law. It can amount to no more than the

(*a*) *Durgadas* v. *Kanshi Ram*, 16 I. C. 769 at 770.

(*b*) *Sunderji* v. *Abigail*, (1928) Sind, 50.

(*c*) 3 American Ruling Case Law, p. 976.

(*d*) *Sattamuthu* v. *Abdul Karim*, (1932) M. W. N. 1149; *Macdonald* v. *Whitfield*, (1883) 8 A. C. 733.

(*e*) *Hill* v. *Lewis*, (1699) 1 Salk 132 ; *Penny* v. *Innes*, (1834) 1 Cr. M. & R. 439.

(*f*) *Plimley* v. *Westley*, (1835) 2 Bing. N. C. 249.

(*g*) Cf. *Jackson* v. *Slipper*, (1869) 19 L. T. 640.

(*h*) Cf. *Plimley* v. *Westley*, (1835) 2 Bing. N. C. 249.

Sec. 36.

transfer of a chose-in-action, and the indorsee will be subject only to such liabilities as are imposed on a transferee of an ordinary chose-in-action. In America, the point seems to have been solved, at least so far as a non-negotiable promissory-note is concerned. There, the law is stated to be this—if the payee indorses a non-negotiable note, he will be liable to his immediate indorsee, though not to subsequent ones; and if the indorsement by the payee is to the order of the indorsee, the note will be negotiable as between the holder and the indorsers, though not as to the maker. (*a*)

Liability of prior parties to holder in due course.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

NOTES.

'Liability of prior party.'

The holder of a bill is entitled to maintain an action thereon in his own name against all or any of the parties whose names appear on the bill; for the indorsement in his favour vests in him such a right.

An instrument is always negotiable until payment or satisfaction, except by the maker of a note or the drawee or acceptor of a bill at or after maturity. (*b*) It follows therefore, that anybody taking the bill or note after such satisfaction cannot acquire a title to it, and hence no action can be maintained by him against any party thereto. But where there is no indorsement of any payment on the note, the indorsee is entitled to recover the full amount expressed on it. If the indorser receives any money and fraudulently negotiates for full value, the defendant is the person to suffer, because by his omission to insist on the previous payments being indorsed, he enabled the fraud to be committed. It has been held that it is not open to the maker of a note payable on demand to plead as against the holder in due course that he paid the money in full to the payee before the indorsement, and that the payment pleaded cannot be one made in due course, since he cannot be said to have acted in good faith and without negligence when he failed to secure the return of the note by the alleged payment of the amount due under the note, and consequently the maker is not discharged from liability under section 82. (*c*) Where, however, a note was lost and in its place a new note was given which was discharged by payment, it was held that an indorsee of the lost note (which was

(*a*) Daniel, sec. 664; 3 American Ruling Case Law, p. 1161.

(*b*) See notes to sec. 90, *post*.

(*c*) *Muthu* v. *Velu* (1916) 2 M. W. N. 107.

subsequently found) claiming under an indorsement subsequent to the discharge was not entitled to sue for the amount due. (*a*) **Sec. 36.**

This liability of each party to a subsequent holder in due course continues till the instrument is duly satisfied. That is to say, as each party pays the subsequent one, if he became originally the possessor of the instrument *bonafide* and for value, he is a holder in due course, and can recover the amount from any person above him. When, however, the acceptor of a bill, or the drawee of a cheque or of an unaccepted bill, or the maker of a note takes up the instrument, the instrument itself is discharged and the liabilities of all the parties are also extinguished.

Holder's right.

The holder is not bound to sue, in the event of dishonour all the parties liable to him under the instrument, but he may, at his option, select his defendant or defendants, as he may judge best for the recovery of the money. (*b*) This is the law in England also, where, although the holder of a bill may have issued the writ or writs against all or any of his debtors, he is not bound to sign judgment against them all, but may select any one or more of them. (*c*) The Code of Civil Procedure (*d*) provides that the holder of a bill of exchange may sue all the parties to it in one action; and a plaintiff suing on a bill of exchange the drawer, acceptor and the indorser in one action is entitled to a decree against all of them; and a decree containing a condition exempting the indorser from liability until the plaintiff has exhausted his remedies against the drawer and acceptor is illegal. (*e*)

Re-indorsements.

If a bill be re-indorsed to a previous indorser, he has in general no remedy against the intermediate parties, for they would have their remedy over against him and the result of the actions would be to place the parties in precisely the same situation as before any action at all. (*f*) That is to say, he is remitted to his original rights and comes again within the definition of a 'holder', and may sue upon the bill in his own name. It is not necessary that the bill should be re-indorsed to him. (*g*) He may, even without a cancellation of indorsement in full, subsequent to that which constituted him the

---

(*a*) (1932) M.W.N. (N.R C.) LXXXVII.

(*b*) *Basant Ram* v. *Kolahal*, 1 All. 392.

(*c*) Rules of Supreme Court, O. XVI. R. 6.

(*d*) C. P. Code. O. I.. R. 6.

(*e*) *Bank of Bengal* v. *Kartick Chunder*, 16 Cal. 804.

(*f*) *Bishop* v. *Hayward*, (1791) 4 T.R. 470; *Britten* v. *Webb*, (1824) 2 B. & C. 483.

(*g*) *Jameson & Co.* v. *Scott*, 36 Cal. 291; *Ponnayya* v. *Palaniappa* 5 I. C. 435.

Sec. 36. holder, negotiate the bill or sue upon it. (*a*) The holder may at any time strike out any indorsement which is not necessary for his title. (*b*) The indorser whose indorsement is intentionally struck out, and all indorsers subsequent to him are discharged from their liabilities. The holder may in some cases make title through a person whose name from the indorsement is struck out; thus, where an accepted bill of exchange was indorsed by the drawer before maturity to the bankers, who in their turn transferred it to the plaintiff by delivery, at the same time erasing from the back of the bill the names of the bankers, it was held that the plaintiff had a good title as a transferor by delivery and could recover against the acceptor, though the consideration as between the drawer and the acceptor had failed. (*c*) Indorsements for collection may be struck out by the owner of the bill, (*d*) and if the indorser of a bill takes it up and pays it when dishonoured, he may strike out his own and all subsequent indorsements, blank or special. (*e*) This is also the law in India, for the section lays down clearly that all parties whose names are on the instrument, are liable to those who come after them. This rule is based on the principle of avoiding circuity of actions; but if the person who gets re-indorsement is not liable on his previous indorsement, he may sue the subsequent parties also, (*f*) for then the principle of continuity of action does not apply.

For the purposes of the present section, the acceptor also must be taken to be a prior party, though his acceptance may come into existence subsequently to the holder getting possession of the instrument.

It will be noticed that this liability of the prior party to the holder in due course is not subject to any contract to the contrary as in the previous section, for it is the established rule that a holder in due course of a bill or note may recover thereon, notwithstanding the existence of facts and circumstances impeaching the validity between antecedent parties. So great is the protection extended to a *bona fide* holder for value of a negotiable paper that it is said that the tendency

(*a*) *Byjnath* v. *Racharam*, (1865) 5 W. R. 86; *Moti Lal* v. *Moti Lal*, 6 All. 78; *Muthar* v. *Kadir*, 28 Mad. 544; *Jameson & Co.* v. *Scott*, 36 Cal. 291; *Mowji Shamji* v. *National Bank of India*, 25 Bom. 499; *Marimuthu* v. *Krishnasami*, 17 Mad. 197; *Subramanian* v. *Alagappa*, 30 Mad. 441; *Veerappa* v. *Muthuraman*, 12 L. W. 12; Cf. *Ghulam* v. *Ram Ditta*, (1930) Lah. 248.

(*b*) *Mayer* v. *Jadis*, (1833) I M. & Rob. 247.

(*c*) *Fairclough* v. *Pavia*, (1854) 9 Ex. 690.

(*d*) *Pasupathy* v. *Raman*, (1915) M. W. N. 227.

(*e*) *Callow* v. *Lawrence*, (1814) 3 M. & S. 95.

(*f*) See sec. 52 post. *Wilders* v. *Stevens*, (1846) 15 L. J. Ex. 108; *Williams* v. *Clarke*, (1847) 16 M. & W. 834; *Smith* v. *Marsack*, (1848) 6 C. B. 486; *Morris* v. *Walker*, (1850) 15 Q. B. 589; *Wilkinson* v. *Unwin*, (1881) 7 Q. B. D. 636.

of courts even in doubtful cases seems to be in favour of sustaining its validity and enforceability in the hands of such a holder, for it would seriously embarrass mercantile transactions and expose traders and merchants to great risks, and the convenience and necessities of commerce require that the negotiable instruments should be protected by such a rule as stated above.

Maker, drawer and acceptor principals.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Prior party a principal in respect of each subsequent party.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

ILLUSTRATION.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

NOTES.

Principal and sureties.

A party liable on a negotiable instrument bears to the holder either the relation of a principal debtor or that of a surety. Section 37 points out what those instances are. In the case of the maker of a promissory note, or the drawer of a cheque or the acceptor of a bill, the maker, the drawer or the acceptor is always the principal debtor, and all the other parties are liable as sureties. (*a*) There is an essential antithesis between the legal position of a surety under sections

(*a*) *Fentum* v. *Pocock*, (1813) 5 Taunt. 192; *Heylin* v. *Adamson*, (1758) 2 Burr. 669, 674, 676.

Sec. 38. 124 and 126 of the Contract Act and that of the executant of a pronote, and hence a person who executes a pronote cannot be held in law to have the position of a surety. (*a*) But it has been held that where a promissee knew that one co-executant was a surety for another co-executant, evidence may be adduced to prove this fact. (*b*) In the case of a bill before acceptance, the drawer is the principal debtor, and the other parties are liable as sureties; but after acceptance, the drawer's liability is changed to that of a surety, and the acceptor becomes the principal party. Even in cases of accommodation bills, the relationship is the same, though it is different *inter se*.

This relationship of the parties is well explained in the following passage from Byles :—"Suppose a bill to have been accepted and indorsed for value. The acceptor is the principal debtor, and all the other parties are sureties for him, liable only on his default. But though all the other parties are in respect of the acceptor sureties only, they are not, as between themselves, merely co-sureties, but each prior party is a principal in respect of each subsequent party. For example, suppose a bill to have been accepted by the drawee, and afterwards indorsed by the drawer and by two subsequent indorsers to the holder. As between the holder and the acceptor the acceptor is the principal debtor, and the drawer and indorsers are his sureties. But as between the holder and the drawer, the drawer is the principal debtor, and the subsequent indorsers are his sureties. As between the holder and the second indorser, the second indorser is the principal, and the subsequent or the third indorser is his surety." (*c*)

This passage has been quoted with approval in *Horne* v. *Rouquette*. (*d*) by Brett, L. J., and the illustration to section 38 is borrowed from that passage. The statement that the acceptor is the principal debtor and the drawer and indorsers are his sureties has been pointed out by Lord Blackburn as inaccurate, (*e*) though it has the support of high authorities. (*f*) The drawer or indorser is not exactly a surety for the acceptor; yet he stands in a position sufficiently analogous to that of a surety to entitle him to the equities of a surety when the bill has been dishonoured, though not before; (*g*) so much so

(*a*) *Behari Lal* v. *Allahabad Bank*, 27 A. L. J. 1137; *Vyravan* v. *Official Assignee*, (1932) M. W. N. 969.

(*b*) *Maung Sein* v. *Ma Saw*, (1924) Rang. 360.

(*c*) Byles (19th Edn.) 275; *Steele* v. *M'Kinlay*, (1880) 5 A. C. 754, 769; see also *Macdonald* v. *Whitfield*, (1883) 8 A. C. 733.

(*d*) (1878) 3 Q. B. D. 514, 517.

(*e*) *Duncan, Fox & Co.* v. *North and South Wales Bank*, (1880) 6 A. C. 1, 9.

(*f*) *Cook* v. *Lister*, (1863) 32 L. J. C. P. 121; *Rouquette* v. *Overmann*, (1875) L. R. 10, Q. B. 525, 537.

(*g*) *Aga Ahmed Ispahani* v. *Judith Emma*, 19 Cal. 242 (P. C.).

it has been held that, where after dishonour of an accepted bill the acceptor tendered the amount less the amount due to himself from the payee and the payee refused to accept the tender claiming the amount from the drawer-company which had gone into liquidation, the liability of the drawer continued only as a surety and he was entitled to the benefit of the set-off in favour of the principal debtor. (*a*) This, however, does not mean that during the currency of the bill the holder cannot deal with the other parties on the bill in any way he thinks fit, so long as he does not prevent himself from giving notice to other parties, so as to make them liable. For example, where the banker is a holder of a bill accepted by a customer and indorsed by a third person, he may vary the securities received from the customer according to the ordinary course of business during the currency of the bill. But, after the bill is dishonoured, and due notice of dishonour is given, the drawer and the indorser are in the position of the surety that they are entitled to the securities deposited as at the date of dishonour. (*b*) This relationship of principal and surety arises, not because of any contract between the parties, but by reason of their position as parties to the negotiable instruments. In such cases, if the person secondarily liable as surety pays off the debt, he is entitled to be subrogated to the rights of the primary creditor and to be placed in his shoes. But, this can hardly apply to a case where the persons borrowed money from a bank under a joint-note, the amount being utilised by them in equal shares and where one of them had to pay the full amount; and so it has been held that the payer had no right to the lien which the bank had over certain shares belonging to the executant of the note who defaulted. It was said that there being no evidence of a contract of suretyship as between the parties, the debt being one equally of both and not of one only, there was no room for the application of the equity in the case of *Duncan, Fox & Co.* v. *North and South Wales Bank*, (*c*) where the liabilities were primary and secondary (as indorser and drawer), and the debt was of one only. (*d*)

Successive parties.

When several persons indorse a negotiable instrument in succession, then each of them is liable to the other in the order they indorse; for the indorsements import several and successive obligations, and not a joint one. Therefore, between successive indorsers, there arises at law no right of contribution, unless an agreement *aliunde* different from that which appears from the indorsement itself

(*a*) *Indian Specie Bank* v. *Nagindas*, 18 Bom. L. R. 689; *Chetandas* v. *Ralli Bros.*, 83 I. C. 135.

(*b*) Falconbridge on 'Banking and Bills of Exchange' (4th Edn.), p. 763.

(*c*) 6 A. C. 1.

(*d*) *Vyravan* v. *Official Assignee*, (1932) M. W. N. 969.

Sec. 38. is alleged and proved. Where after the payee's name is indorsed in a note, two other parties indorse it in blank, this will, instead of raising the presumption that the undertaking was joint, authorise the presumption that it was successive. This presumption however, can be rebutted by proof of special agreement. So, where in a case the Directors of a company agreed with each other to become sureties to the bank for the same debt of the Company, and in pursuance of that agreement they made three promissory notes by the company and successively indorsed them, it was held that all the circumstances attendant upon the making, issue and transference of the note might be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put the signature upon it either as makers or indorsers; any reasonable inference derived from these facts and circumstances was admitted to the effect of qualifying or altering, the relative liabilities which the law merchant would otherwise assign to them, and it was held in the case that the Directors were co-sureties and not sureties in succession. (*a*) The relationship of the parties on the bill to the holder does not determine the liabilities as between themselves; thus where one co-surety was a drawer and the other an indorser, it was held that in spite of their position in the bill there can be contribution as between themselves. (*b*) In the absence of all evidence to the contrary, the liabilities *inter se* of successive indorsers will be determined according to the ordinary principle of the Law Merchant, whereby a prior indorser must indemnify a subsequent one. In the case of joint-makers of a note, the presumption is that each took a moiety of the amount and so jointly liable, (*c*) and not as surety to each other, (*d*) unless there is a contract to that effect which is dependent on the facts in each case. (*e*)

The contract of the acceptor, the drawer, or the intermediate indorser of a bill being distinct from each other, his liability solely arises out of his respective contract. It is true that each contracts to pay the same sum of money, but they contract severally in different ways, and subject to different conditions. (*f*) A decree obtained against any of them without satisfaction cannot be pleaded as a bar to a suit against any other of them, (*g*) nor can it be objected that the

(*a*) *Macdonald* v. *Whitfield*, (1883) 8 A. C. 733.

(*b*) *Reynolds* v. *Wheeler*, (1861) 10 C. B. N. S. 561.

(*c*) *Narayanamurti* v. *Marimuthu*, 26 Mad. 322.

(*d*) *Vyravan* v. *Official Assignee*, (1932) M. W. N. 969; *Behari Lal.* v. *Allahabad Bank*, 27 A. L. J. 1137.

(*e*) *Mutual Loan Association* v. *Sudlow*, (1858) 5 C. B. N, S. 449, 453; *Wauthier* v. *Wilson*, 28 T. L. R. 239; *Maung Sein* v *Ma Saw*, (1924) Rang. 360.

(*f*) *Pogose* v. *Bank of Bengal*, 3 Cal. 174, 184; see *Doolarchand* v, *Mohabeer Surun*, 19 W. R. 304.

(*g*) *T. M. Pigou* v. *Ram Jushunt*, 1. W. R, 95; *Abdoor Ruhman* v. *Baboo Gunnesh*, (1875) 23 W. R. 444.

holder or the payee of the bill having once elected to proceed against any one of the parties, is precluded from falling back on the liability of the other parties. Again, the fact that the acceptor of a bill is not liable, because he was joined as a party to the suit after the period of limitation had expired, does not discharge the drawer from his liability where the suit has been instituted as against him in time. (*a*)

Contract to the contrary.

The contract on the bill between the drawer and the acceptor, or between the drawer and the indorsee, or between any indorser and his indorsee, is a direct contract between those parties, the liability under which may be regulated by any specific agreement to the contrary. In the case of accommodation bills, it is always implied that there is such a contract to the contrary ; (*b*) for, the drawer in such a case is the principal debtor and the acceptor is the surety ; and if the acceptor pays the bill, the drawer should indemnify him ; but if the drawer pays, he cannot proceed against the acceptor. Similarly, where a person indorses for the accommodation of the indorsee, the person for whom he indorses can have no remedy against him, if he were to take up the instrument. In the case of a maker who has been induced by the promisee to sign the note under the belief that a third party only would be liable, it has been held that he cannot be held personally liable to him. But, it has been held that where a person is induced to execute a promissory note in favour of a bank by the Director thereof to conceal an unauthorised loan to himself on the promise that he (the maker) would not be liable on the note, the maker cannot escape liability, as the Director cannot be said to be acting for the bank in such circumstances. (*c*)

Again, if the bill is drawn and accepted for the accommodation of the indorser, he cannot proceed against the drawer or the acceptor after paying the bill. This contract *inter se* is enforceable only against the immediate party, and does not affect remote parties except in cases of restrictive or conditional indorsements. In the case of a promissory note made by two or more persons, it is no defence to an action by the payee or the holder, to plead that one is the principal debtor, and the other is the surety, even though that fact was known to the payee at the time of the contract ; for, to receive such evidence would be to vary the terms of the contract in contravention of the provisions

---

(*a*) *Jambu Ramaswami* v. *Sundaraja*, 26 Mad. 239.

(*b*) *Nand Ram* v. *Sitla Prasad*, 5 All. 484 ; *J. C. Panioty* v. *Dwarka Mohun*, 4 C. L. R. 145 ; Cf. *Pogose* v. *The Bank of Bengal*, 3 Cal. 174.

(*c*) *National Bank of Upper India* v. *Bansidhar*, 92 I. C. 194, on appeal, 57 I. A. 1.

Sec. 38. of section 92 of the Evidence Act, (*a*) Similarly an oral agreement between the makers converting a joint and several liability under a note into distinct portions is opposed to the section, (*b*) though as between the parties executing the promissory note, such evidence is always admissible. For the definition of a promissory note makes it clear that the maker must *unconditionally* promise to pay the amount; if evidence is allowed to be given of a conditional liability (such as that of a surety), it will be repugnant to the deed. Thus, there is an essential antithesis between the legal position of a surety and that of the maker of a note. (*c*)

But in England, the law is different and this doctrine has been based on this ground (*d*), *viz.*, "that although the courts of Common Law and of Equity agree on the principle that the question whether one party to a written contract has become liable to another as a principal or only as a surety must be ascertained from the terms of the contract itself, yet if a person, with knowledge, that one who has contracted with him as a principal is really but a surety for a co-contractor, gives time to the real principal, an equity arises in consequence, which, in a court of Equity, entitles the surety to be discharged from the contract. Sometimes it is also said that it is a fraud in the eye of the law for a creditor to proceed against the surety after agreeing to give time to the principal for payment and that the court will relieve against such fraud. (*e*)"

Whatever the law in England, here we have to deal with a positive legislative enactment in section 92 of the Evidence Act and section 132 of the Contract Act, which are against the proof of such arrangements. (*f*) But it is said that section 132 of the Contract Act should not extend beyond its literal terms, and Pollock and Mulla seem to be of opinion that where one of two joint debtors is to the knowledge of the creditor, in fact, a surety, his immediate liability to the creditor is not qualified, but he is entitled to the rights of a surety under sections 133, 134 and 135 of that Act, and so hold that the law as settled in England in *Oakeley v. Pasheller* (*g*) and *Overend, Gurney & Co. v.*

(*a*) See, Indian Contract Act, sec. 132; *Punchanun* v. *Daly*, 15 B. L. R. 331, 342; *Sornalinga* v. *Pachai* 38 Mad. 680; *Narasimmamurti* v. *Ramasami*, 24 M.L. J. 91; *Vellian* v. *Woomidy*, 29 I. C. 760; *Behari Lal* v. *Allahabad Bank*, (1929) All. 664.

(*b*) *Rangasami* v. *Somasundaram*, 27 L. W. 820.

(*c*) *Behari Lal* v. *Allahabad Bank*, (1929) All. 664.

(*d*) *Hollier* v. *Eyre*, (1842) 9 Cl. & F. 1, 45, 51; *Greenough* v. *McClelland*, (1860) 2 E & E. 424, 433.

(*e*) *Davies* v. *Stainbank*, (1854) 6 De J. M. & G. 679, 696.

(*f*) *Harek Chand* v. *Bishun*, 8 C. W. N. 101.

(*g*) (1836) 4 Cl. & F. 207.

Oriental Financial Corporation. (*a*) is applicable to India. (*b*) It is submitted, however, that such a construction of section 132 is hardly correct in the face of the clear terms of the section, which says that "the liability under the first contract shall not be *affected* by existence of the second contract, although the creditor may have been aware of its existence." At any rate, to hold otherwise in the case of promissory notes executed by two or more persons jointly, it would be not only to nullify the section and the illustration thereto, but also to convert an unconditional undertaking under a written instrument (*c*) into a conditional liability, for the liability of a surety is only conditional under section 126 of the Contract Act. (*d*)

Sec. 39.

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

IX of 1872.

NOTES.

In the case of ordinary contracts, any act or contract of the creditor discharging or likely to discharge the principal debtor, or any contract by which the creditor makes a composition with or promises to give time to sue or not to sue the principal debtor, discharges the surety. (*e*) It is said that under the Indian Contract Act (IX of 1872), a creditor cannot reserve his rights to proceed against the surety while discharging the principal debtor. (*f*) The better opinion seems to be that he can do so, as there is nothing inconsistent in sections 134 and 135 of the Contract Act with the right of such reservation, which has been well recognised in England. (*g*) For, it is said, that the nominal release of the debtor, subject to a reservation of security, does not destroy the debt but operates only as a covenant not to sue the debtor,

(*a*) (1874) L. R. 7 H. L. 348.

(*b*) Pollock and Mulla's Indian Contract Act. (VI Edn.) 479.

(*c*) *cf.* The definition of promissory note in sec. 4 *ante.*

(*d*) *Behari Lal* v. *Allahabad Bank Ltd.*, (1929) All. 664.

(*e*) Indian Contract Act, secs. 134, 135.

(*f*) Shephard's Contract Act (11th Edn.) 403; *Maung Po* v. *Maung Kaw*, 44 I. C. 693; *Williams* v. *King*, 20 I. C. 189; *Mathewson* v. *Ram Kanai*, 16 I. C. 387 (Cal.).

(*g*) *Bateson* v. *Gosling*, (1871) L. R. 7 C. P. 9; *Overend Gurney & Co.* v. *Oriental Financial Corporation*, (1874) L. R. 7. H. L. C. 348; *Bharoomal* v. *Mazar*, 52 I. C. 870, following *Sankana* v. *Virupakshapa*, 7 Bom. 146.

Sec. 39. who remains liable to indemnify the surety, (*a*) though, however, the whole debt is discharged, as by accepting a new debt instead of the old one, the debt is extinguished, and the surety also is discharged and no right can be reserved against him. (*b*) Again, where the creditor made a new arrangement with one of the makers of a joint and several note by receiving a larger sum than was due, and erased his name from the note, it was held that this was a complete release of the debtor, and that the co-debtors were also discharged. (*c*) In Madras, the right to reserve remedies has been upheld. (*d*) At any rate, so far as negotiable instruments are concerned, the section expressly enacts that it is open to the holder to reserve his rights against the other parties when contracting with the acceptor. The section as it stands seems to imply that the right of reservation is not to be extended beyond its terms. It applies only to *contracts* referred to in section 134 of the Contract Act and not to any act or omission, the consequence of which is to discharge the debtor. Further, the operation of the section is restricted to contracts with the *acceptor* only. There is no reason apparent for so confining the operation of the section to the case of the acceptor alone. Consistently, the rule must have been made applicable to the maker of a note, the drawer of a cheque, or indeed any party who is in fact the principal debtor in a transaction on a negotiable instrument. Under these circumstances, it is not easy to decide what will be the effect of a contract of the kind mentioned in the section with the maker of a note or the drawer of a cheque. It is submited that, if this section is treated as an exception to the general rule relating to the law of sureties as enacted in the Contract Act, the provisions of this section cannot by analogy be applied to the cases mentioned above. It will not be out of place here to point out that the Select Committee introduced this provision in their report of 1878, as otherwise the result would have been to extinguish the power which the holder of an accepted bill had under the English law to release the acceptor, reserving his rights to charge the other parties. (*e*)

If, therefore, the holder of a bill agrees with the acceptor to give him time for payment, (*f*) unless consented to by the surety (*g*)

(*a*) Pollock's Contract Act (VI Edn.) 486.

(*b*) *Commercial Bank of Tasmania* v. *Jones*, (1893) A. C. 313; *Lakshmi Narasayya* v. *Venkatakrishnayya*, 15 L. W. 143; Cf. *Perry* v. *National Prov. Bank of England*, (1910) 1 Ch. 464.

(*c*) *Nicholson* v. *Revill*, (1836) 4 A. &. E. 675; *Cragoe* v. *Jones*, (1873) L. R. 8 Ex. 81 (case of private composition).

(*d*) *Murugappa* v. *Munusami*, 38 M. L. J. 131.

(*e*) *Gazette of India*, (1878) Part V. 145, 146.

(*f*) Indian Contract Act, sec. 135; *Askaran Baid* v. *Pir Bux*, 8 C. L. J. 163; *Mohendro* v. *Jadhub Kissen*, 14 W. R. (A. O. J) 5, 7; *Huree Mohun* v. *Krishno Mohun*, 17 W. R. 442, 444.

(*g*) *Torrance* v. *Bank of British North America*, (1873) L. R. 5 P. C. 246.

Sec. 39.

Giving time.

or takes in lieu of payment a new bill payable at a future day, (*a*) not merely as additional or collateral security (*b*) or delays at the request of the acceptor presenting the bill for payment, (*c*) the drawer and the indorsers of the bill are discharged. Where, in an accommodation bill, a contract was entered into with the principal debtor (who was not, in that case, even a party to the bill) to hold over the bills during the currency of certain other bills given as additional security, the Judicial Committee held that the meaning of the arrangement was that no proceedings should be taken either on the bill or on the guarantee, and that it was open to the vice of an agreement to give time. (*d*) When the contract to give time to the principal debtor is made by the holder with a third person, the drawer and indorsers who are in the position of sureties, are not discharged. (*e*) Mere forbearance on the part of the holder to sue the acceptor has not the effect of discharging the surety-parties, (*f*) nor does a promise to give time unsupported by consideration, and hence not enforceable, discharge the sureties. (*g*) There is a difference of opinion on the question whether forbearance to sue the principal debor till after the expiry of the period of limitation, discharges the sureties. The Allahabad High Court has consistently held that the surety is in such circumstances discharged, (*h*) but the other courts hold the other way. (*i*) A surety cannot discharge himself by pleading that he gave notice to the creditor that the debtor was doing away with his property and that he should take steps to recover the money, and that no such steps were taken. (*j*)

Composition with the principal.

In like manner, if the holder enters into any composition with the acceptor, (*k*) or if he assents to a deed executed by the principal debtor conveying all his property to trustees for the benefit of creditors, which

---

(*a*) *Gould* v. *Robson*, (1807) 8 East. 576; *Goldfarb* v. *Bartlett*, (1920) 1 K. B. 639, 648.

(*b*) *Calvert* v. *Gordon*, (1828) 7 B. & C. 809; *Overend Gurney & Co. Ltd.*, v. *Oriental Financial Corporation* (1874) L. R. 7 H. L. 348.

(*c*) *Latham* v. *Chartered Bank of India*, (1874) L. R. 17 Eq. 205.

(*d*) *Overend Gurney & Co. Ltd.* v. *Oriental Financial Corporation*, (1874) L. R. 7 H. L. 348.

(*e*) Indian Contract Act, sec. 136.

(*f*) *Ibid* sec. 137.

(*g*) *Damodar Das* v. *Muhammad Husain*, 22 All. 351; *Clarke* v. *Birley*, (1889) 41 Ch. D. 422.

(*h*) *Ranjit* v. *Naubat*, 24 All. 504; *Salig Ram* v. *Lachman*, 50 All. 211; *Jag Mohan* v. *Gatali*, 130 I. C. 298 (All).

(*i*) *Subramania* v. *Gopala*, 33 Mad. 308; *Naraindas* v. *Nenu*, (1929) Nag. 145; *Hajarimal* v. *Krishnarav*, 5 Bom. 647; *Sankana* v. *Virupakshapa*, 7 Bom. 146; *Raghavendra* v. *Mahipat*, 49 Bom. 202; *Krishto* v. *Radha*, 12 Cal. 330; *Brajendra* v. *Hindustan Co-operative Insurance Society*, 44 Cal. 978; *Dil Mohammad* v. *Sain Das*, (1927) Lah. 396; *Nur Din* v. *Alla Ditta*, (1932) Lah. 419; *Carter* v. *White*, (1883) 25 Ch. D. 666, 672.

(*j*) *Diyalu Mal* v. *Nandu Shah*, (1931) Lah. 691.

(*k*) Indian Contract Act, sec. 135.

Sec. 39.

impairs the remedy of the surety against the principal debtor, the surety is discharged. (*a*) But accepting a composition from the acceptor under the Bankruptcy Act will not discharge the drawer and the indorsers, for the acceptor in that case is not discharged by any act of the holder, but by operation of law. (*b*) A covenant not to sue the acceptor at all or not to sue him for a limited time will discharge the drawer and indorsers. (*c*) The acceptance of interest in advance, is as a general rule, construed to be a contract with the debtor not to sue during the time in respect of which the interest is pre-paid, and consequently by such act the surety is discharged; (*d*) but the mere fact of pre-payment of interest is not always conclusive evidence of a contract to give time. (*e*) The holder may receive part-payment from the acceptor; in such a case, the other parties are not discharged from their liability to pay the remainder. However, the holder must not in receiving part-payment release, or give time to, the principal party. (*f*) A mere striking of the balance of account between the creditor and the principal debtor does not discharge the surety, for, while this may extend the time and the privileges available to the creditor, does not confer any benefit on the debtor or affect the surety. (*g*)

Accepting advance interest.

Reservation by holder.

But in all the cases above cited where the acceptor is discharged by any contract entered into with him, the drawer or the indorsers will not be discharged when there is an unqualified reservation of the holder's remedies against them; for such a reservation rebuts the implication that the surety was meant to be discharged, and also prevents the right of the surety against the principal debtor being impaired, the injury to such rights being one of the reasons for the discharge of the surety. (*h*) In such a case, it is immaterial whether the surety is informed of the arrangement or not; for the release so qualified is allowed to operate only so far as the surety rights are not affected thereby. (*i*) The reservation by the holder mentioned in the section should be express and clear. (*j*) Where during the trial of a suit on a promissory note against the maker and two sureties, the plaintiff withdrew his suit against the maker, it was held that there was an express reservation of the plaintiff's intention to prosecute his

---

(*a*) Cf. *Pogose* v. *The Bank of Bengal*, 3 Cal. 174.

(*b*) Re *Jacobs*, (1875) L. R 10 Ch. App. 211.

(*c*) Indian Contract Act, sec. 135.

(*d*) *Kali Prasanna* v. *Ambica Churn*, 9 B. L. R. 261; *Protab Chunder Dass* v. *Gour Chunder Roy*, 4 Cal. 132, on appeal to P. C., 6 Cal. 241.

(*e*) *Rayner* v. *Fussey*, (1859) 28 L. J. Ex. 132; *Punchanun* v. *Daly*, (1875) 15 B. L. R. 331.

(*f*) *Gould* v. *Robson*, (1807) 8 East 576.

(*g*) *Devi Das* v. *Sant Singh*, (1931) Lah. 627.

(*h*) *Kearsley* v. *Cole*, (1846) 16 M. & W. 128, per Parke, B.

(*i*) *Bailey* v. *Edwards*, (1864) 4 B. & S. 761; *Webb* v. *Hewitt*, (1857) 3 K. & J. 438, 442.

(*j*) *Ibid.*

Sec. 39.

Legal representative.

remedies against the two sureties. (*a*) Similarly, where in a suit on a pronote against the maker and the surety, the maker's name was struck off under O. 9, R. 5, C. P. Code as he could not be served, it was held that the surety was not discharged, provided the suit was still in time against the maker. (*b*) On the other hand, it has also been held, that where a creditor allows the suit to abate against the principal debtor on account of his omission to bring the legal representatives on record in time, the surety is discharged. (*c*) Again, where the creditor having failed in a suit against the principal and surety, filed an appeal which became infructuous by reason of his having precluded himself from joining the principal debtor as respondent, the court held that no court would pass a decree against the surety. (*d*)

As has been already said, this right of the holder to reserve his remedies against the drawer and the indorsers is exercisable by him only in respect of any *contract* by him with the acceptor. It would seem, therefore, that this section cannot apply to cases of acts or omissions on the part of the holder, (not the result of any contract with the acceptor) the legal consequence of which is the discharge of the acceptor. (*e*) It follows, that the holder cannot reserve his rights against the drawer or indorsers in such cases.

Release of party accommodated.

Neither section 39 nor section 40 deals with the question as to how the liability of the accommodation acceptor is affected by the conduct of the holder towards the party accommodated. Under the Common Law in England, the liability of such acceptor was not affected by the holder releasing the party accommodated or granting time or showing similar indulgences to him. (*f*) But, Courts of Equity mitigated the rigour of this rule by allowing the accommodation acceptor to show that he was only a surety and by holding that if the holder had knowledge of the nature of the transaction at the time of granting the indulgence to, or releasing the accommodated party, the accommodation acceptor was discharged. Now such defence is available, even in a court of law, by way of equitable defence. (*g*) Of course, it is for the defendant to show that he is not, as he *prima facie* appears to be, the principal debtor. (*h*) Therefore, if he so proves,

---

(*a*) *Murugappa* v. *Munusami*, 38 M. L. J. 131; *Jawala* v. *Mt. Rajkaur*, (1930) Lah. 812.

(*b*) *Nathabai* v. *Ranchod Lal*, 39 Bom. 52; *Shaik Alli* v. *Mahomed*, 14 Bom. 267.

(*c*) *Nur Din* v. *Alla Ditta*, 106 I. C. 481 (Lah.).

(*d*) *Mathewson* v. *Ram Kanai*, 16 I. C. 387 (Cal).

(*e*) Re *Jacobs*, (1875) L. R. 10 Ch. App. 211.

(*f*) *Fentum* v. *Pocock*, (1813) 5 Taunt. 192.

(*g*) *Greenough* v. *McClelland*, (1860) 30 L. J. Q. B. 15; *Pooley* v. *Harradine*, (1857) 7 E. & B. 431.

(*h*) *Ramakistnayya*, v. *Kassim*, 13 Mad. 172.

Sec. 39. he will be treated as a surety and will be entitled to his rights as such. Thus, where certain holders of bills of exchange, with notice that the acceptance was for accommodation of the drawer, agreed with him that the debt should be liquidated by his building certain ships for them, (*a*) or where in a similar case, the holder entered into a deed of arrangement and of inspectorship with the drawer, that he should carry on his business under the supervision of the holder and pay the debt in instalments, (*b*) it was held, that the acceptor was discharged, as the effect of the arrangement in either case was to give time to the principal debtor. As would be seen, a person, whose liability is, *ex facie*, that of a principal, may acquire the rights of a surety, not necessarily by a contract with the holder, but by mere notice to him. (*c*) Therefore, an accommodating party to a bill is entitled to be regarded as a surety at least from the time the relation of the parties is notified to the holder, though he had no such notice at the time of taking the instrument. (*d*) Thus, where a person accepts a bill for the accommodation of another, and after notice of dishonour by the holder to all parties, the acceptor gave him full information as to the arrangement of accommodation, and thereafter the holder, in consideration of the receipt of fresh bills, agreed not to sue on the old bills, and where after non-payment of the new bills, the holder brought an action on the original bill against the acceptor thereof, it was held, that if after a right of action accrues to a creditor against two or more persons, he is informed that one of them is a surety only and after that he gives time to the principal debtor without the consent and knowledge of the surety, the rule as to the discharge of the surety applies. (*e*)

It is to be noticed that in the above case, the name of the person accommodated was not upon the bill and he was not directly a party to it.

The doctrine extends even to cases where persons having contracted originally as principals afterwards became by arrangement sureties and that fact is made known to the creditor, before time is given or other indulgence shown. Thus, a retiring partner who retires under a deed of dissolution with a covenant that the continuing

---

(*a*) *Davies* v. *Stain Bank*, (1854) 6 De. G. M. & G. 679.

(*b*) *Bailey* v. *Edwards*, (1864) 4 B & C. 761.

(*c*) Contra. *Hurjeeban* v. *Bugwan*, 16 W. R. (O. C. J.) 16, which is no longer law in view of the decision in *William Rouse* v. *Bradford Banking Co.*, (1894) A.C. 586.

(*d*) Rowlatt on Principal and Surety (2nd Edn.) p. 5; *Oakeley* v. *Pasheller*, (1836) 4 Cl. & F. 207.

(*e*) *Overend Gurney & Co.* v. *Oriental Financial Corporation*, (1874) L. R. 7 H. L. 348 360, 361.

partners should pay the debt, and indemnify him, becomes a surety to such of the creditors of the partnership as have notice of the covenant. (*a*) But, in America there is a conflict of authorities on the point, and eminent text-writers maintain a contrary view, *i.e.*, that the accommodation acceptor is not discharged by the conduct of the holder on the ground that the question ought to be determined by the ostensible character of the parties as appearing on the face of the bill, and that no extrinsic evidence is to be admitted to show that one party was in fact a surety and known to be such by the holder. (*b*) It may be said that the Indian Act adopts the view of the Equity Courts in England, from the presence of the words "in the absence of a contract to the contrary" in section 37 of the Act. (*c*) But, it can hardly be said that a mere knowledge of the accommodation character amounts to "a contract to the contrary." However that may be, the Courts in India being Courts of justice, equity and good conscience will follow the decisions of the English Equity Courts, in the absence of any binding provision to the contrary. Section 132 of the Indian Contract Act cannot apply to cases like the one under consideration, for it deals only with cases of joint liability. Nor does section 92 of the Evidence Act present any difficulty, as under proviso (1) to that section, it may be shown that the acceptor received no consideration for the bill and hence he is only a surety. In fact, the Calcutta High Court has in a case (*d*) before the Act adopted this view, and the Courts of Madras and Allahabad show a decided leaning towards it. (*e*)

Discharge of indorser's liability.

40. When the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

(*a*) *Rouse* v. *Bradford Banking Co.*, (1894) A. C. 586; *Goldfarb* v. *Bartlett*, (1920) 1 K. B. 639.

(*b*) Daniel. secs. 1336 to 1338 (a).

(*c*) See *Ramakistnayya* v. *Kassim*, 13 Mad. 172.

(*d*) *Pogose* v. *Bank of Bengal*, 3 Cal. 174; See *Harjiban* v. *Bhagwan*, 7 B. L. R. 535.

(*e*) *Ramakistnayya* v. *Kassim*, 13 Mad. 172; *Mulchand* v. *Madho Ram*, 10 All. 421.

Sec. 40.

ILLUSTRATION.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B."

Second indorsement, "Peter Williams."

Third indorsement, "Wright & Co."

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

NOTES.

Discharge of indorser.

This section may be compared with section 139 of the Contract Act, which it closely follows. It is to be observed that the section applies only to indorsers and not to the case of a drawer. Hence this case will have to be determined by the provisions of the Indian Contract Act. Thus, before the passing of the Act, it was held, that where the indorsers of a bill of exchange joined the drawer in executing a trust deed of the drawer's properties upon trust for the benefit of creditors, the acceptor for accommodation of the drawer (and hence his surety) was not discharged from liability, as his 'eventual remedy' was not in any way impaired under the provisions of section 139 of the Contract Act. (*a*)

Under sections 37 and 38, we have seen that an indorser is a surety to the holder and for all parties liable prior to him; and any act of the holder which is prejudicial to the interest of the surety, or in any way impairs the right of the surety to be indemnified by the debtor discharges him. Thus, the indorser of a bill, being compelled to pay the amount, is on this principle entitled to recover the amount paid with interest from the prior parties.

Striking out indorsements.

The illustration to this section gives an instance of the discharge of the principal debtor, and the consequent discharge of the surety, *i.e.*, the striking out of a prior indorser's name. By such striking out of the indorser's name, the right of a subsequent party to the instrument to indemnify as against that party is destroyed. It is not, however, clear from the section whether the striking out of an

(*a*) *Pogose* v. *The Bank of Bengal*, 3 Cal. 174.

indorsement by mistake will have the same effect. From the wording of section 82 (a), the inference can easily be made that to have the effect of releasing a party, the cancellation of his name must be intentional. This is the law in England, where it has been held that if the striking out is made by mistake, and the same is indicated thereon, it does not destroy the right of a holder to recover on the instrument against the indorser whose name is so cancelled. *(a)* It is clear that the name of the party struck out may be that of any indorser immediate or remote, but it must be that of a party prior to the person pleading discharge by cancellation. This may well be illustrated by the following passage of Daniel: "The contracts of the several indorsers are like so many links of a pendant chain; if the holder dissolves the first, every link falls with it. If he dissolves an intermediate link, all after it are likewise dissolved. But the last link supports nothing, and its dissolution injures no one." *(b)*

Destroying securities.

Another instance is that of the holder destroying the securities given by the acceptor which the holder has in his hands. It is a rule of equity that an indorser of a negotiable instrument is entitled to the benefit of those securities which the holder can have no claim to, except for the instrument itself. The indorser of a bill of exchange becomes, from the moment of dishonour and notice thereof being given, a surety to the holder for the acceptor, and becomes on payment entitled as such surety to all the documents held by the holder as security for the amount due on the instrument. It was said that the holder is not really a surety for the acceptor, yet he stands in a position analogous to that of a surety to bring him within the principle of equity. It is to be noticed that this relationship of surety does not come into existence during the currency of the bill, and he has no equity to prevent the indorsee from varying or otherwise dealing with the securities as it may seem to him most desirable with other parties, unless thereby he prevents himself from giving notice of dishonour. After the bills are dishonoured, the position is altered, and the equities do attach when the bills, overdue and dishonoured, and the securities are found in the hands of the creditor at the time he demands payment; when the creditor has no other transaction then depending with the acceptor and no claim on the securities except for the bills themselves. It does not matter in such a case whether the securities were all given by all the acceptors or by one of them, *(c)*

(a) B. of Ex. Act, sec. 63 (2). See page 180, *ante*.

(b) Daniel, sec. 1307.

(c) *Duncan, Fox & Co.* v. *North and South Wales Bank*, (1880) 6 A. C. 1; *Jowitt & Sons.* v. *Union Cold Storage Co.*, (1913) 3 K. B. 1.

Sec. 41. or whether he has notice of them or not. (*a*) The same rule is applicable to the indorser of a promissory note. (*b*)

It only remains to notice the distinction between sections 39 and 40. The preceding section, as already noticed, refers only to bills of exchange, whereas the present section applies to all negotiable instruments. Again, under the present section, if the act of the holder is such as is calculated to destroy the remedies which the sureties may have against the principal debtor, such act discharges their liability, and not even an express reservation of the holder's rights to proceed against the sureties will keep the remedy alive against such sureties. Ofcourse, the rule can have no force, if the indorser himself joins in the act of releasing the debtor, or otherwise impairing the remedy of the sureties. (*c*)

Acceptor bound although indorsement forged.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

NOTES.

Acceptance knowing indorsement forged.

Ordinarily,the acceptor is not precluded by his acceptance from showing that the indorsement is forged, as he does not admit by his acceptance that the indorsement is genuine, (*d*) though he admits the payee's capacity to indorse. (*e*) If, however, he knew or had reason to believe at the time of acceptance that the indorsement was forged, then he cannot subsequently deny that the indorsement was genuine, because in that case he ought not to have accepted it at all. By his conduct in accepting it knowing that the indorsement is not genuine, he is a party to the fraud practised, and therefore he cannot be allowed to reap the advantage of his own fraud by showing that as the indorsement is forged, he is not liable. It is said that the section is based upon the principle of estoppel, but it is submitted it is not so, as estoppel does not depend on the knowledge of, or the mistake of fact of, the party estopped. Again, estoppel does not arise when the other party relying on estoppel knows of the true nature of the case; but the

(*a*) *Pearl* v. *Deacon*, (1857) 24 Beav. 186, on appeal 1 De. G. & J. 461.

(*b*) *Aga Ahmed* v. *Crisp*, 19 Cal. 242, (P.C.).

(*c*) *Perry* v. *National Provincial Bank*, (1910) 1 Ch. 464.

(*d*) *Robinson* v. *Yarrow*, (1817) 7 Taunt. 455.

(*e*) Sec. 121, *post*.

section seems to apply even in the case of a suit brought by the forger himself, though he may not be entitled to relief on the ground of the fraud committed by him.

It may be argued that the section lends support to the view that forgery like any other offence conveys a defective title, and that there is no distinction in India such as exists in English law between forgery and other offences, whereby forgery is regarded as conveying no title at all. What the section really says is that the acceptor cannot deny the holder's title though obtained through forgery, when he accepted the instrument knowing it to be forged. The consequence is that the acceptor has to pay the amount twice, once to the holder, and again to the real owner of the bill or note.

Drawer's name forged.

What is the liability of a person accepting an instrument where the drawer's name is forged, knowing it to be so forged? This section cannot apply to such a case, nor is there any other section in the Act providing for it. Ordinarily, an acceptor can relieve himself from liability by showing that the drawer's name is forged. (*a*) But if he accepts an instrument knowing of the forgery of the drawer's signature, according to the spirit of this section and the general principle underlying it, it would seem that he would still be bound by his acceptance. (*b*) The same principle applies to a case where a bill is accepted in blank for the purpose of being negotiated and is afterwards filled in with the name of a person as drawer and indorser. The acceptor cannot be allowed to prove against a *bona fide* holder for value that either the drawing or indorsement is a forgery. The name inserted may be that of a real person or of a fictitious person. (*c*)

Acceptance of bill drawn in fictitious name.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

(*a*) Indian Evidence Act, sec. 117.

(*b*) *Beeman* v. *Duck*, (1843) 11 M. & W. 251.

(*c*) *London and South Western Bank* v. *Wentworth*, (1880) 5 Ex. D. 96.

Sec. 42.

NOTES.

Under the English law, on the principle that the acceptor is bound to know the signature of his correspondent, *i.e.*, the drawer, the acceptor is estopped from denying the signature of the drawer; but under the Indian law there is no such estoppel against the acceptor. (*a*) Even in England, this rule of estoppel does not apply to the case where a bill is drawn to the drawer's order and indorsed by him, in which case, the acceptor though he cannot deny the signature of the drawer, may still question the genuineness of his signature as indorser. (*b*) An exception is always recognised in the case where a bill is drawn in the name of a fictitious person and payable to the drawer's order. That exception is embodied in this section. In such cases, the acceptor is considered as undertaking to pay to the order of the person who signed it as drawer, and therefore the indorsee, adducing evidence to show that the signature of the supposed drawer of the bill and the first indorsement on it are in the handwriting of the same person, is entitled to recover the amount as against the acceptor. (*c*)

"Fictitious."

The meaning of the word 'fictitious' has given rise to a considerable difference of opinion. (*d*) The word as applied to the payee has been elucidated in a series of cases in England; (*e*) the result of such decisions may be expressed thus: whenever the name of a person is inserted as payee by way of pretence without any intention on the part of the drawer that payment should be made to him, the payee is a fictitious person, whether that person be existing (*f*) or non-existing. (*g*) Hence, the word is used in a relative sense; and so, a payee may be fictitious, though there exists a person of that name. But if the drawer designates an existing person as the payee intending that he should receive payment, then it is impossible to call such payee as fictitious, though the drawing is brought about by the fraud practised by a third person on the drawer with the intention of getting the amount to himself by forging the name of the payee. (*h*) But, if in fact, the payee does not exist, then

(*a*) Indian Evidence Act, sec. 117.

(*b*) *Beeman* v. *Duck*, (1843) 11 M. & W. 251.

(*c*) *Cooper* v. *Meyer*, (1830) 10 B. & C. 468; *Jones* v. *Turnour*, (1830) 4 C. & P. 204; *London & S. W. Bank.* v. *Wentworth*, (1880) 5 Ex. D. 96.

(*d*) *Bank of England* v. *Vagliano*, (1891) A. C. 107; Cf, the decision of the Privy Council in *Harendra* v. *Haridasi*, 41 Cal. 972 and *Biswanath* v. *Chandra*, 48 Cal. 509 where the word 'fictitious' under the Registration law are explained.

(*e*) See the cases cited in Halsbury (2nd Edn.) Vol. II. p. 620.

(*f*) *Bank of England* v. *Vagliano*, (1891) A. C. 107; *Edinburgh Ballarat etc, Co.* v. *Sydney*, (1891) 7 T. L. R. 656.

(*g*) *Clutton* v. *Attenborough, & Son*, (1897) A. C. 90.

(*h*) *Vinden* v. *Hughes*, (1905) 1 K. B. 795; *North and South Wales Bank* v. *Macbeth*, (1908) A. C. 137; *Goldman* v. *Cox*, (1924) 40 T. L. R. 744; *Robinson* v. *Midland Bank*, (1925) 41 T. L. R. 402.

he is non-existing, although the drawer believed him to exist; in this sense, there is a distinction between a fictitious and a non-existing person; for if the person is non-existing, the state of the mind of the drawer is irrelevant, since his mis-apprehension or belief cannot make a person exist who does not exist. (*a*)

Drawer fictitious, but not payee.

Is the acceptor relieved from liability by proving that the drawer is fictitious, though the payee is not? Under section 117 of the Evidence Act, the acceptor can show that the bill was drawn by a person other than the person purporting to draw, but he cannot show that the drawer does not exist at all; for he, by his accepting the bill, acknowledges that he has funds of the drawer in his hands to meet the bill accepted by him. Moreover, the principle of this section would seem to apply to this case also, though not in terms, as it pre-supposes the liability on the part of the acceptor to pay to a holder in due course in case the drawer is fictitious.

Payee fictitious.

Another interesting question not covered by the section is the liability of an acceptor of a bill drawn in favour of a fictitious payee. Before the Bills of Exchange Act, the law in England was that the acceptor was liable, only if he was aware of the fictitious character of the payee at the time of his acceptance. (*b*) The law has since been altered by the Act, by which it is provided that such bills may be treated as bills payable to bearer. (*c*) Now, in England, an acceptor is not relieved from liability if the payee is fictitious, whether that fact was known to him or not. Daniel is of the same view for which he gives two reasons :—(1) that the acceptor by his acceptance admits the existence of funds of the drawer in his hands, and he may be made liable, just as a drawer can be by a holder deriving title through a fictitious payee; and (2) that the acceptor can have no concern whether the payee is fictitious or not, for it is only in case of a forged indorsement of the payee, he will be liable to the real payee. (*d*) The Indian Act does not throw any light on this point. If the acceptor knows of the fictitious character of the payee, the case is not any worse than that contemplated in section 41, *ante*. Moreover, if he accepts the instrument with such knowledge, he perpetuates a fraud on third parties, and he cannot escape liability by showing his own fraud. But, if the acceptor had no such knowledge at the time of acceptance, the reasons of Daniel given above, lead to the conclusion that he is liable. But it is to be

(*a*) *Clutton* v. *Attenborough & Son*, (1897) A. C. 90.

(*b*) *Gibson* v. *Minet*, (1791) 1 H. Bla. 569; *Gibson* v. *Hunter*, (1794) 2 H. Bla. 288. Cf. *Bank of England* v. *Vagliano*, (1891) A. C. 107.

(*c*) B. of Ex. Act, sec. 7 (3).

(*d*) Daniel, sec. 138.

Sec. 43.

noticed that under section 121 of this Act, it is doubtful whether the acceptor can be estopped from denying the existence of a payee.

Liable only to a holder in due course.

It is to be observed that only a holder in due course can recover on instruments in which the drawer or payee is fictitious. This is so, because law abhors fraud, and discountenances any instrument whereby fraud can be committed. (*a*) They are never enforced, save in the hands of a holder in due course. Chalmers seems to be of the opinion that only parties privy to the fraud cannot recover; but a holder for consideration, though not a holder in due course, is entitled to recover. (*b*) At any rate, under this section, the acceptor is liable only to a holder in due course.

Negotiable instrument made, etc., without consideration.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full

(*a*) Daniel, sec. 136. (*b*) Chalmers (10th Edn.) 27.

shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Sec. 43.

NOTES.

It is a presumption of law that a bill or note, whether expressed to be for value received or not, was given for a valuable consideration, and it is incumbent on a defendant who pleads want of consideration, to prove that there has been no consideration or that the consideration has failed. Thus, where a note was given for services to be rendered which had never been performed, (*a*) or for a balance which was not really due; (*b*) in either case the maker is not liable, in the former case on account of forfeiture of consideration and in the latter for want of consideration.

Bills, etc., given as gift.

As to what is a valuable consideration, see notes to section 9 *ante*. If a bill of exchange, promissory note or cheque is delivered by the drawer or maker to the payee as a gift, it cannot be enforced against him or his personal representative, nor can an indorsee enforce against his indorser a bill or note indorsed to him as a gift; (*c*) so much so it has been held that where a cheque was given to A who presented it for payment, but was returned on account of some doubt in the drawer's signature and in the meanwhile the drawer died, there was no effective gift and no action can lie against the donor's estate. (*d*) However, though between the donee and the donor, no liability arises, yet as between the donee and the other prior parties to the bill, they are liable to him. (*e*) Although the donee of a bill cannot sue the donor on the instrument, the making of the note may perhaps constitute a valid declaration of trust in favour of the donee. (*f*) Objections as to the absence of consideration can be inquired into only between the parties who stand in immediate relation to each other, that is, the drawer and the acceptor, the payee and the drawer of a cheque or the maker of a promissory note, and an indorser and his indorsee. (*g*) Thus, an indorser may show that he put his name on the bill as the agent of his indorsee only for safe

(*a*) *Abbott* v. *Hendricks*, (1840) 1 Man & Gr. 791.

(*b*) *Kearns* v. *Durell*, (1848) 6 C. B. 596.

(*c*) *Holliday* v. *Atkinson*, (1826) 5 B. & C. 501; Re *Whitaker*, (1889) 42 Ch. D. 119, (C. A.)

(*d*) *Swinburne*, In re, *Sutton* v. *Featherley*, (1926) 1 Ch. 38.

(*e*) *Easton* v. *Pratchett*, (1835) 1 C. M. & R. 798, 808.

(*f*) *Arthur* v. *Clarkson*, (1865) 35 Beav. 458.

(*g*) See the explanation to sec. 44, *post*.

Sec. 43.

transmission of the bill. (*a*) Between parties who do not stand in such immediate relation, it is no defence that the defendant drew, accepted, or indorsed for no consideration ; (*b*) but he must go further and prove that neither he, nor any of the intermediate parties through whom the plaintiff derives his title paid any consideration. Thus, where there was good consideration from the drawer to the payee, no further consideration is contemplated by this section to flow from the payee to the acceptor to make him liable on the acceptance. (*c*)

Failure of consideration.

If the consideration paid at the time of drawing, accepting or indorsing is to fail subsequently, such subsequent failure of the consideration is as fatal as the original want of consideration ; and in fact it has, in most cases, the effect as its total absence. So, where the defendants gave a note to a person in consideration of his acting as his executor under the will and in fact actually survives him, it was held that the consideration wholly failed and the note was unenforceable. (*d*) Similarly, where a future event on which a contract is based becomes impossible through no fault of either party, no obligations arise between them. Thus, where the plaintiffs agreed with the defendants on behalf of the Navy League to supply refreshments to the members at a Naval Review, which did not come-off owing to the King's illness and it was agreed further that in the event of cancellation of the Review there should be no liability, it was held in a suit on a cheque given by the defendants in advance, that they were not liable. (*e*) Based on the principle above stated, it has been held that the purchaser of goods who had accepted bills against documents is bound to pay the bills according to their tenor, though the goods might not have arrived and he had no opportunity to examine the goods before payment. The rule in such cases seems to be that he is bound to hand over the bills, though this will not prejudice his rights subsequently to reject the goods if entitled to do so under the circumstances and claim compensation. (*f*) So also, in a case where the bill was accepted against shipping documents for goods which could not be delivered owing to the war, but by a proclamation was allowed to be taken delivery of, it was held that the consideration for the action did not fail owing to the proclamation ; in any event, as the acceptance of the bill was unqualified, the acceptor was bound to pay on the due

(*a*) *Castrique* v. *Buttigieg*, (1856) 10 Moo. P. C. 94.

(*b*) *Robinson* v. *Reynolds*, (1841) 2 Q. B. 196 ; *Guaranty Trust Co.* v. *Hannay & Co.*, (1918) 1 K. B. 43 at 53.

(*c*) *Jogeshchandra* v. *Mahammad Ibrahim*, 57 Cal. 695.

(*d*) *Solly* v. *Hinde*, (1834) 2 Cr. & M. 516.

(*e*) *Elliott* v. *Crutchley*, (1906) A. C. 7.

(*f*) *Mcleod & Co.* v. *Ivan Jones & Co.*, (1926) Cal. 189.

date, or at any rate after the proclamation which allowed consignees to take delivery of goods. (*a*) This, however, cannot apply to cases where acceptance was obtained on bills after the outbreak of war against bills of lading which had therefore become void. In such cases, there is a failure of consideration for the acceptance of the bill, and the acceptor is not bound to pay at maturity. The fact that the acceptance was unconditional does not affect this question. (*b*) Such a defence is, therefore, open between immediate parties, but if such party transferred the instrument to a holder for consideration, such holder and every subsequent holder claiming through him may recover the amount from the transferor or any party prior to such transferor and, for this purpose, it makes no difference whether the indorsement preceded or succeeded the acceptance. (*c*) But, where a promissory note was indorsed over to one, after he knew that the consideration for it had failed, he would have no cause of action, since the indorser had no title to negotiate it. Thus, where the first defendant induced the second defendant to execute a note to him in part-consideration of transferring to him a mortgage deed in his favour, but failed to register the transfer deed though required to do so, and the note was transferred to the plaintiff for a small consideration, who sued on the same, it was held that he could not recover, as the plaintiff knew the history of the note and it would open a wide door for fraud and be opposed to first principles of justice, if he is allowed to recover. (*d*) Chalmers makes a distinction in the case of total failure of consideration, and states that total failure of consideration is a defence not only against an immediate party, but also against a holder for value, but not against one in due course. (*e*) The reason suggested is that it is in the nature of a fraud to negotiate a bill, when the holder knows that the consideration for which he has received it, has failed. His view seems to be supported by *Lloyd* v. *Davis*. (*f*) Whatever be the English law on the subject, the section clearly says that the failure of consideration, even it be a total one, is no defence against a holder for value, or any person deriving title under him. When a defendant can plead total want of consideration as a defence, he may also plead partial absence or partial failure of consideration. In the former case, it goes to the entire validity of the negotiable instrument, and avoids it; in the latter case, it affects the instrument only *pro tanto*, but the *quantum*

(*a*) *Motishaw & Co.* v. *The Mercantile Bank of India*, 41 Bom. 566.

(*b*) *Marshal & Co.* v. *Naginchand*, 42 Bom. 473.

(*c*) *Guaranty Trust Co.* v. *Hannay & Co.*, (1918) 1 K. B. 43, 53; *Santhana* v. *Sundaraswamy*, 1 M. L. T. 393; *Subrao* v. *Sitaram*, 2 Bom. L. R. 891.

(*d*) *Muthia* v. *Kasivasi Somasundara*, 10 M. L. T. 79.

(*e*) Chalmers (10th Edn.) 117.

(*f*) (1824) 3 L. J. K. B. 38; but see Halsbury's Laws of England, (II Edn.) Vol. II, p. 648.

Sec. 43.

to be deducted on that account must be liquidated, and must be in the nature of a certain debt. (*a*) Very often promissory notes are given as security for overdrafts in banks; and in a suit on such note it is open to the defendant to plead want of consideration in whole or in part, and to insist on an account being taken of the amount actually due. (*b*) It has been further held that a defendant can plead that a note was executed as security for money to be spent on litigation and that no monies were spent at all (*c*).

A distinction has been made between a case of want of consideration and a case where the consideration becomes of no value through no fault of the parties. Where a bank obtained acceptance of a firm of merchants, of bills which contained a memoranda or references to bills of lading for specified quantity of cotton, and was later on found that the bills of lading were forgeries and that both the parties were misled in the matter, it was held that the bank did not by presenting the bill of exchange for acceptance, warrant or represent the bills of lading to be genuine and that the bank was entitled to recover the amounts due under the acceptances. It was said that the acceptance was full and unconditional and was not dependent upon the nature of the bill of lading. (*d*)

Inadequacy of consideration.

If the drawing, accepting, or indorsing was supported by some consideration, the Courts will not inquire into the adequacy of such consideration, though inadequacy of consideration may be evidence of bad faith or fraud. It is important to distinguish between inadequacy of consideration from partial absence and failure of consideration.

"Prior party."

The phrase "any prior party thereto" is slightly ambiguous, and may mean that the last indorser who does not himself receive the consideration will not be liable to a holder for value. For example, if a person indorses in blank a cheque for the accommodation of the drawer who transfers it for consideration to a third party, then he is not a prior party to the drawer receiving, and so not liable under this section. The phrase may perhaps be better worded thus: "any party to the bill at the time of the transfer." (*e*) Again, from the wording of the section, it would seem that a person transferring an instrument for consideration without putting his indorsement on it, will be liable to the person to whom he so transfers for consideration. But this

(*a*) Sec. 45, *post*.

(*b*) *Sundaram* v. *Damodaram*, (1924) M. W. N. 529.

(*c*) *Suppan* v. *Sadaya*, 99 I. C. 753.

(*d*) *Leather* v. *Simpson*, (1871) L. R. 11 Eq. 398; *Baxter* v. *Chapman*, (1873) 29 L. T. 642; *Guaranty Trust Co. of New York* v. *Hannay & Co.*, (1918) 2 K. B. 623.

(*e*) *Rohilkhand & Kumaun Bank* v. *Row*, 7 All. 490.

cannot be what was meant by the Legislature, as the very object of a transfer without indorsement is to avoid liability under the instrument. (*a*) The words "without indorsement" in the first part of the section ought to be held not to qualify "the transferor for consideration" towards the end of the first paragraph of the section.

Accommodation bills, etc.

It is difficult to understand how exception I is really an exception to this section. It relates to accommodation instruments. An accommodation bill or note is one to which the accommodating party has put his name without consideration for the purpose of accommodating some other party who is to use it, and is expected to pay it when due. (*b*) It is a sort of a loan of mercantile credit to others by the signature of the person as drawer, acceptor, or indorser for the purpose of raising money thereon for the benefit of the person to whom it is loaned. In such cases, the party, who procures another to lend his name, thereby engages himself to pay the bill or note at its due date, or to provide the accommodating party with funds for so doing; or in case the accommodating party has to take up the bill and pay it, he undertakes to indemnify him to the extent of the damage incurred by him. (*c*) It follows from this relationship of parties that if the person accommodated provides the accommodating party with funds to meet the bill at maturity, this is in law, merely a performance of his contract, and the money may be retained by him not only against revocation but also against the trustee in case of bankruptcy. (*d*) On the same principle, if he pays the amount due under the instrument, he can have no right of action as against the party who puts his name to it for his accommodation. If, however, the instrument has passed into the hands of a third party for value, the absence of consideration between the accommodating and the accommodated party will not affect him, and he will be entitled to recover against any person whose name appears on the bill, (*e*) although he knew when he took up the bill that the person became a party to it for the accommodation of another. (*f*) But the accommodating party may avail himself of a right of set-off which the person accommodated could have set up on the ground that the accommodating party is only a surety and he is

(*a*) Cf. notes to sec. 47, *post*.

(*b*) *Parr* v. *Jewell*, (1855) 16 C. B. 684; *Smith* v. *Knox*, (1799) 3 Esp. 46.

(*c*) *Nand Ram* v. *Sitla Prasad*, 5 All. 484; *Reynolds* v. *Doyle*, (1840) 1 M. & Gr. 753; *Bishop*, Ex parte, (1880) 15 Ch. D. 400. But if he pays voluntarily without due notice of dishonour, he has no such right to recover, *Sleigh* v. *Sleigh*, (1850) 5 Ex. 514.

(*d*) *Yates* v. *Hoppe*, (1850) 9 C. B. 541.

(*e*) *Mills* v. *Barber*, (1836) 1 M. & W. 425; *Rohilkhand & Kumaun Bank* v. *Row*, 7 All. 490.

(*f*) See *Bank of Ireland* v. *Beresford*, (1818) 6 Dowl. 233, 237 (H.L); *Fentum* v. *Pocock*, (1813) 5 Taunt. 192; *Strong* v. *Foster*, (1855) 25 L. J. C. P. 106.

Sec. 44.

entitled in equity to make such a defence. (*a*) Where in a suit on a promissory note, the maker admitted execution but pleaded want of consideration on the ground that the plaintiff and one A, an official, had money-dealings, that they were unwilling that any written document should pass between them and that at the request of both of them the defendant executed the note, it was held that the defence in effect amounted to a denial of consideration, and that it was open to the maker to show that he signed the note as a mere name-lender which would mean that there was an agreement that the maker was not to be sued on the note. It was further held that where the rights of *bona fide* transferees are not involved, this section permits the defendant to raise a plea of no consideration. (*b*) Question has sometimes arisen as to whether cross-acceptances given for mutual accommodation of each other, are accommodation bills or bills for value. Thus, if A draws a bill on B which he accepts, and B draws on A a bill which is accepted by him, it is said that one is good consideration for the other, so that if either becomes a bankrupt, the bill accepted by him may be proved against his estate. (*c*) The same will be the effect if a person brought bills of a bank giving for the same some cash, and bills on a firm consisting of himself and another. (*d*)

Exception II

The second of the exceptions to the section will have to be confined in its operation to immediate parties only, for, otherwise, it will land us in this difficulty, that a transferee of an instrument who fails to perform or pay any part of his consideration, cannot recover from *any* party to the instrument more than what he has paid or performed. (*e*) Being an exception, its provisions have to be strictly applied. Therefore, it must be made clear that the person against whom the exception is claimed is the person who offered the inducement. (*f*)

Partial absence or failure of money-considera-tion.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part,

(*a*) *Bechervaise* v. *Lewis*, (1872) L. R. 7 C. P. 372, 377.

(*b*) *Sesha* v. *Mangal Doss*, 20 M. L. J. 144; *Suppan* v *Sadaya*, 99 I. C. 753.

(*c*) *Burdon* v. *Benton*, (1847) 9 Q. B. 843; *Kent* v. *Lowen*, (1808) 1 Camp. 177 (N. P.)

(*d*) *London, Bombay & Mediterranean Bank*, In re, Ex parte *Cama*, (1874) 9 Ch. App 686.

(*e*) See notes to secs. 44 & 45 *post*.

(*f*) Cf. *National Bank of Upper India* v. *Bansidhar*, 57 I. A. 1.

the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced. Sec. 44.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

ILLUSTRATION.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

NOTES.

This section deals with partial absence, or partial failure of money-consideration, while section 45 deals with partial failure of consideration not consisting of money. The operation of the section is confined to immediate parties. Ordinarily, such parties are: (1) the drawer and the acceptor of a bill, (2) the drawer and the payee of a bill, as a general rule, (3) the maker and the payee of a note, (4) the drawer and the payee of a cheque, and (5) the indorser and his indorsee of a bill, note, or cheque. (6) In addition to these well-known classes, the section points out another class of immediate parties who are constituted so by agreement. If a bill is drawn and accepted for the accommodation of the payee, the acceptor will then stand in immediate relation with the payee. Again, an agent, or trustee holding an instrument on behalf of another person, can stand in no better position than that person, and he will be subject to all the defences available against the person for whom he holds the instrument. Generally, a person who has not himself given value for coming into possession of a negotiable instrument is deemed the agent of the person from whom he receives it,

Immediate parties.

Sec. 44.

whatever other relations there may be between them. (*a*) Also, notice creates privity, when it is notice of the defective title of the person from whom the bill was taken. (*b*)

Between parties who are in such immediate relationship, it may always be shown that there was a partial absence of consideration, or that consideration has failed in part subsequently. But to advance such a defence to an action on a bill or note, the *quantum* to be deducted must be ascertainable in a sum of money. (*c*) Where a lesser amount than is shown in the promissory note is subsequently advanced by the payee, the liability of the maker is under this section proportionately reduced. (*d*) Again, when a cheque is given for a sum larger than was really due, the payee is not entitled to recover more than what is actually due, (*e*) and it may be shown that he was induced to sign for a larger sum on a representation that such a sum was due, whether such representation be fraudulent or innocent. (*f*) Where a note was executed as part-consideration for the price of a room, of which possession alone was given but title could not be conveyed, as the payee had none, it was held that the consideration failed and there was no obligation to pay. (*g*) The illustration to the section is based on the case of *Darnell* v. *Williams*. (*h*)

Transferee from immediate party.

The section does not say anything about the rights of a transferee from the person standing in immediate relationship with the signer. Neither a holder for value, nor a holder in due course will be affected by a partial failure of consideration between prior parties, as the operation of the section is confined to immediate parties. Suppose an immediate party with the signer transfers the instrument to another for no consideration, will that person be entitled under the section to recover more than what his transferor can? As already remarked, a person taking an instrument for no consideration is deemed an agent of the party from whom he receives the instrument, and on that principle, it may be said that this is covered by the provision at the end of the section as to the creation of immediate relationship by agreement. (*i*)

(*a*) *De La Chaumette* v. *Bank of England*, (1829) 9 B. & C. 208; *Currie* v. *Misa*, (1875) L. R. 10 Ex. 153, 164.

(*b*) Chalmers (10th Edn.) 115.

(*c*) Cf. Sec. 45, *post*.

(*d*) *Nasir Ali* v. *Kher Chand*, 36 I. C. 996.

(*e*) *Kishen Bahadur* v. *Sassaram Lime Ltd.*, (1924) Pat. 521.

(*f*) *Southall* v. *Rigg*, (1851) 11 C. B. 481.

(*g*) *Mc. Ayoob* v. *Sowdager*, (1923) Rang. 127.

(*h*) (1817) 2 Stark. 166.

(*i*) Cf. *Agra and Masterman's Bank* v. *Leighton*, (1866) L. R. 2 Ex. 56, 64, 65.

Sec. 45.

Partial failure of consideration not consisting of money.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

NOTES.

This section deals with partial consideration not consisting of money. The rule embodied in the section is that partial failure of consideration is a defence *pro tanto* against an immediate party, when such part of the consideration is an ascertained and liquidated amount, (*a*) but not otherwise; that is to say, the value of such part of the consideration must be one ascertainable in money without collateral enquiry. Thus, if a vendee accepts a bill for £ 100 as the price of two bales of cotton, each bale being worth £ 50, and if the vendor fails to supply one bale or the vendee returns one bale as being of inferior sample, then the vendee can set up the defence of partial failure of consideration. (*b*)

If, on the other hand, a collateral enquiry is necessary in order to ascertain the value of the part of the consideration alleged to have failed, then the holder will be entitled to recover the whole amount on the bill, though the other party may bring an action against the first party for damages. For example, where hundis were given in respect of a lease of the fruits of a garden, and in a suit on the hundis, it was pleaded that the plaintiff did not water the garden etc., which he was bound to do under the contract and that the damages incurred amounted to more than the amounts due on the hundis, it was held that the defence was not available. (*c*) Again, if the vendee of certain goods accepts a bill drawn by the vendor for £ 100 for the agreed price of goods to be supplied by the latter, and the goods supplied being of inferior sample worth only £ 80, then in a suit by the vendor on the bill, the vendee cannot set up the defence that the goods are

(*a*) *Day* v. *Nix*, (1824) 9 Moore 159; *Sully* v. *Frean*, (1854) 10 Ex. 535; *Barber* v. *Backhouse*, (1791) 1 Peake 86.

(*b*) *Agra and Masterman's Bank* v. *Leighton*, (1866) L. R. 2 Ex. 56, 64, 66; *Arunachalam* v. *Krishna*, 49 M. L. J. 530.

(*c*) *Sethna* v. *Ladak*, 8 I. C. 924.

Sec. 45-A.

worth only £ 80 and claim relief as on a partial failure of consideration. (*a*) In some early cases, (*b*) it is said that where the consideration of a bill fails entirely, it will be sufficient defence to an action by the original party, but not so if it fails partially, in which case, it is said that the defendant must take his remedy by a cross-action against the party claiming on the bill. Thus, where under an agreement that the plaintiff should do some carpentry work for the defendants for £ 63, a cash payment of £ 43 was made, and for the balance a bill drawn by the plaintiff was accepted by the defendant, it was pleaded by the defendant, in an action on the bill that the plaintiff did not perform some work and the rest he did in an unworkman-like manner, so that the whole work done was not worth more than £ 43. But it was held that the defence did not disclose a total failure of consideration, but only a partial failure to which the money payment and the bill were alike applicable. (*c*).

It will be noticed that the defence of partial failure of consideration, when available, can be set up only against immediate parties. As regards such a defence being available against a voluntary transferee, see notes to section 44.

Scope of sec. 43, exception II.

Under Exception II to section 43, if the holder had induced the maker, acceptor, drawer or indorser to sign a bill or note, then such holder is not entitled to receive more than the value of the consideration given by him. The words 'without collateral inquiry' are not to be found in the exception; and according to the letter of the exception, in such cases of inducement by the holder, the Court may embark on a collateral inquiry in a suit upon the bill or note by such holder. This section cannot be said to control that exception, as inducement by the holder is not referred to in this section, and the exception seems to provide for a different case altogether. To apply this exception it must be made clear that the person against whom the exception is claimed is the person who offered the inducement. (*d*)

Holder's right to duplicate of lost bill.

45-A. Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer,

(*a*) *Glennie* v. *Imri*, (1839) 3 Y. & C. 436 (Ex.); *Tye* v. *Gwynne*, (1809) 2 Camp. 346.

(*b*) *Morgan* v. *Richardson*, (1806) 1 Camp. 40 n; *Fleming* v. *Simpson*, (1806) 1 Camp. 40 n.

(*c*) *Trickey* v. *Larne*, (1840) 6 M. & W. 279.

(*d*) Cf. *National Bank of Upper India* v. *Bansidhar*, 92 I. C. 94, on appeal 57 I. A. 1.

if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again. **Sec. 45-A.**

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

NOTES.

This section was inserted by section 3 of the Negotiable Instruments (Amending) Act II of 1885, in accordance with the provisions in section 69 of the Bills of Exchange Act, which it closely follows.

Owner of a lost bill, etc.

If a bill or note is lost by the owner, the owner's title to it is not thereby destroyed, and he can, on tracing the instrument in the hands of a finder or any transferee from him, not being a holder in due course, take it away from such person, (*a*) or he can recover the money due on the instrument as damages, if the finder had already received payment. (*b*) But, if the instrument is one indorsed in blank, or made payable to bearer, a third party acquiring it from the finder *bona fide*, for valuable consideration and before maturity, acquires a good title to it and is entitled to enforce payment against the acceptor or other parties. If, when he took the instrument, he had notice of the loss, he can be in no better position than the finder himself. Hence, in all cases of loss, it is advisable for the owner of a lost negotiable instrument to give immediate notice of its loss to all parties liable on the instrument, warning them not to pay the amount to anybody but himself. After such notice, the acceptor ought to pay the amount only on adequate indemnity being given, for if it turns out that the person receiving payment is not a holder in due course, the real owner may recover the amount over again from him. It is enough if the notice reaches the acceptor of a bill or the maker of the note before maturity; for then it is that the instrument is to be paid, and an acceptor or other party is not protected, if he pays it before maturity, as such payment is not a payment in due course. (*c*) The rule in such a case is stated thus:—"The loser of a negotiable instrument has no claim on a payer who pays it when he is bound to do so, but generally has

(*a*) *Lovell* v. *Martin*, (1813) 4 Taunt. 799.

(*b*) *Burn* v. *Morris*, (1834) 2 Cr. & M. 579.

(*c*) Sec. 82 (c), *post*.

Sec. 45-A.

such claim when the payer pays it when he is under no compulsion or liability to do so, although without notice of the loss." (*a*) A notice to the public also is necessary to protect the interests of the loser, for if the loss is made well-known, then no banker or other person will be willing to take up such instrument and even if he did, he will not be a *bona fide* holder without notice of the loss. But this notice will, however, be unavailing against a person who takes the instrument *bona fide* and for value, before the notice of loss reaches him.

At Common Law in England, an indorsee or holder of a bill, if it was lost, could not recover against the acceptor, because it was a condition of payment that the holder should deliver up the bill for the security of the acceptor. But in a court of Equity, he was allowed to recover on offering indemnity. (*b*) This difficulty was only in respect of instruments negotiable. (*c*) If the lost bill or note is one not payable to bearer or indorsed in blank, but is expressed to be payable to order and unindorsed, or has been indorsed in full to a particular person, different considerations arise. In such a case, no legal title can pass to any person even taking it *bona fide* with an indorsement in the hand of the person who lost the bill. If such a bill is circulated with the name of the real owner indorsed, then the indorsement and subsequent transfers are tainted by forgery, and forgery can in no case confer title. With regard to bearer cheques, however, it is clear that the banker paying them is protected, for in doing so he merely obeyed the mandate of his customer, the drawer, and could charge him accordingly. (*d*)

His duties.

The loss of a bill or note does not absolve the party who lost it, from making an application for payment when it becomes due, and to give notice of dishonour to all parties ; for otherwise, he will lose his remedy against the drawer and indorsers. (*e*) Protest may be made on a copy or written particulars of a lost or destroyed bill. (*f*) He may also, if the bill was lost before maturity, apply to the drawer to give him a duplicate, giving if required, security to the drawer to indemnify him against all claims, in case it is found. The drawer is not bound to give a duplicate of a lost bill until the holder guarantees him against any future demand, and the duplicate need not be paid if the original has been duly paid ; even a custom to the contrary

His rights.

(*a*) Daniel, sec. 1461.

(*b*) *Hansard* v. *Robinson*, (1827) 7 B. & C. 90 ; *Ramuz* v. *Crowe*, (1847) 1 Ex. 167.

(*c*) *Wain* v. *Bailey*, (1839) 10 Ad. & E. 616 ; *Thairlwall* v. *Great Northern Railway*, (1910) 2 K. B. 509.

(*d*) *Charles* v. *Blackwell*, (1877) 2 C. P. D. 151, 158.

(*e*) *Thackray* v. *Blackett* (1812) 3 Camp. 164.

(*f*) See B. of Ex. Act. sec. 51 (8).

cannot be given effect to. (*a*) If the drawer on such request refuses to do so, an action will lie against him to compel him to give a new bill, (*b*) but if he brings the action without offering the indemnity he will have to pay the defendant's costs, (*c*) and presumably, damages may be claimed in the alternative. As to execution of negotiable instruments by the order of Court, see Civil Procedure Code, Order XXI, R. 34.

Scope of the section.

The section makes provision only for bills lost before maturity, and does not consider the case of a bill lost after maturity; perhaps for the reason that in the case of a bill overdue at the time of loss, there can be no person acquiring it but is subject to all the equities between antecedent parties. Although the bill or note ceases after maturity to be negotiable so as to constitute the holder a holder in due course, still it may pass from hand to hand by indorsement and delivery, for a negotiable instrument does not cease to be negotiable until payment or satisfaction thereof by the drawee, acceptor or maker; and as the actual holder is always presumed to be a holder in due course, the person liable to pay will be put to risk, trouble and expense in establishing his defence that the person demanding payment is not a holder in due course. It is difficult, therefore, in such cases to judge whether an indemnity is necessary or not. (*d*) The safer course for the Courts to act on, in suits brought on a lost negotiable instrument is to require the plaintiff to give indemnity against any loss, in case the lost note is to be found. Such power is expressly given to the Courts by the Civil Procedure Code. (*e*)

Indian Bills of Ex. Act, 1916.

During the War and as a temporary measure, the Indian Bills of Exchange Act of 1916, section 3 enacted as follows :—" Where, in any suit or other proceeding founded upon a bill of exchange payable outside British India, there is reason to believe that the bill has been lost, and that the loss can reasonably be presumed to be, either directly or indirectly, to circumstances arising out of the present war, the Court may allow proof of the bill to be given by a copy thereof, certified by a notary public, or by means of such other evidence as the Court thinks reasonable under the circumstances, and may pass a decree thereon, notwithstanding any rule of law of the place where the bill is made payable: Provided that such indemnity be given against the claims of other persons as the Court may require."

(*a*) *Indur Chunder* v. *Lachmee*, 15 W. R. 501.

(*b*) *Gillett* v. *Bank of England*, 6 T. L. R. 9.

(*c*) *King* v. *Zimmerman*, (1871) L. R. 6 C. P. 466.

(*d*) See *Hansard* v. *Robinson*, (1827) 7 B. & C. 90.

(*e*) C. P. Code, O. VII, R. 16; *Duggempudi Nagamma* v. *Peda Venkata*, 12 L. W. 147.

Sec. 45-A.

Power to obtain duplicate.

"Power to obtain duplicate in case of loss is a part of the mercantile laws of countries, and ample scope is given to it by Courts of Equity in England, both on bills lost before and after maturity and on notes as well; and against the acceptor or indorsers as well as the drawer, on a satisfactory indemnity being given." The section is not so wide as the proposition of law laid down in the above passage; for it is confined in its operation to bills only, and that too before they arrive at maturity; moreover, the remedy given by the section to the loser is against the drawer alone. But the Indian Courts administering rules of equity, justice and good conscience adopt the above rule as being not only in consonance with the spirit of the section, (*a*) but also as being the rule applied to similar cases in England. The rule has been applied by the Allahabad High Court before the passing of the Act, against an indorser in the case of a cheque, where the learned Judges quote with approval a similar passage of Byles in an earlier edition as justifying the decision. In such a suit, the drawer is a necessary party. (*b*)

This right of applying for a duplicate enures only to the holder of a bill, *i.e.*, the person who in his own name is entitled to the possession of the bill. (*c*)

Destroyed bills.

The section does not in express terms apply to destroyed bills, nor does the rule in the Civil Procedure Code refer to them. It is presumed that the same principles will apply. If any distinction is to be drawn, it will be in favour of bills destroyed, for it is said that at Common Law, an action would lie on such bill, and secondary evidence be admissible of the contents of the bills, on proof of its destruction. (*d*) The plaintiff would in such cases recover without even an indemnity. (*e*)

(*a*) *Udho Ram* v. *Hemraj*, (1924) Lah. 198.

(*b*) *Baldeo Prasad* v. *Grish Chandar*, 2 All. 754.

(*c*) *Kaminee* v. *Radha Sham*, 18 W. R. 58. Cf. *Good* v. *Walker*, (1892) 61 L. J. Q. B. 736.

(*d*) *Pierson* v. *Hutchinson*, (1809) 2 Camp. 211; *Woodford* v. *Whiteley*, (1830) M. &. M. 517; *Wright* v. *Maidstone*, (1855) 1 K. & J. 701.

(*e*) Falconbridge on Banking, p. 799.

CHAPTER IV.

OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive. **Delivery.**

As between parties standing in immediate relation delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

NOTES.

Every contract on a bill whether it be the drawer's or the acceptor's or an indorser's is incomplete and revocable until delivery of the instrument, in order to give effect thereto. (*a*) **'Delivery' essential.**

(*a*) B. of Ex, Act, sec. 21 (1).

Sec. 46. Delivery is essential to perfect the existence of any written contract, and therefore as long as a bill or note is in the hands of a drawer, maker, indorser, or drawee, it is of no effect, (*a*) so that when it was found that the indorsee had abstracted the pronote from the custody of the indorser, it was held that the indorsement did not vest the title in the indorsee as there was no delivery. (*b*) It has been held in Madras (*c*) that the making of a promissory note is altogether the act of the maker, and requires delivery to the promisee to render it complete, and in the same case, following the observations of Coleridge, J. in *Wilde* v. *Sheridan*, (*d*) a distinction was made between an acceptance of a bill of exchange which is written on the drawer's paper and therefore complete without delivery, and an indorsement which is incomplete without delivery. There seems to have been some ground for this distinction from the state of the decisions in English law at the time, which are discussed by Bittleston, J, in a later case. (*e*) The result of such cases is stated by him thus: "As to bills of exchange and promissory notes, the obligation of the maker of a promissory note or of the indorser of a bill of exchange, and probably of the acceptor also is not complete without delivery of the instrument to the payee, indorsee or holder." This distinction has not been kept in view, in the later cases in England, and is no longer tenable either in England or in India, considering the wording of the sections of the respective Acts relating to "delivery."

Not for acceptance.

However, this distinction may be said to be still retained in a modified form; for, under section 7, delivery is not necessary to complete the contract of acceptance on a bill, and the mere giving notice of the acceptor's signing to the holder or any person on his behalf is sufficient to complete the contract. (*f*) This is for the reason that "the drawee unlike the drawer or indorser, has no property in the bill, therefore less is required to make him attorn to the holder." (*g*) In other cases of contracts on negotiable instruments, delivery is essential for the completion of the contract. (*h*) The mere placing of a bill or note by the drawer or maker in the hands of his agent for delivery, does not invest the payee with any right to it, and the instrument may be revoked by the drawer or maker if the instrument has not been delivered. (*i*) The

(*a*) *Chapman* v. *Cottrell*, (1865) 34 L. J. Ex. 186.
(*b*) 57 M. L. J. (N.R.C.) 33.
(*c*) *Winter* v. *Round*, 1 M. H. C. R. 202.
(*d*) (1852) 21 L. J. Q. B. 260.
(*e*) *De Souza* v. *Coles*, 3 M. H. C. R. 384, 395.
(*f*) *Cf.* B. of Ex. Act, sec. 21.
(*g*) Chalmers (10th Edn.) 60.
(*h*) *Bhawanji* v. *Devji*, 19 Bom. 635.
(*i*) *Latter* v. *White*, (1872) L. R. 5 H. L. 578; *Arnold* v. *Cheque Bank*, (1876) 1 C. P. D. 578, 584. See *Bank of England* v. *Vagliano*, (1891) A. C. 107.

Sec. 46.

drawee too, although he has written his acceptance on the bill, may change it and cancel it before delivery or communication of acceptance to the holder. Thus, where a bill was left with the drawee for acceptance, and was accepted the same day, but when the holder called for it the next day, he was merely informed that it was mislaid and was requested to call again and in the meantime, the drawee heard of the failure of the drawer, and accordingly cancelled his acceptance and delivered the bill dishonoured to the holder, it was held that the drawee was entitled to cancel the acceptance as there had been no valid acceptance, and cancellation was made before any communication of his acceptance. (*a*) Such communication of acceptance need not necessarily be to the holder of the instrument at the time; it is enough if it is made to some party liable on the instrument, for it enures to the benefit of all parties. (*b*) When once the acceptance has been communicated to the holder, the drawee cannot revoke it, even with the consent of the holder, because the drawer and the indorsers have acquired an interest in the acceptance. (*c*) But, an acceptance under a mistake may be revoked, if there be time for the holder to notify the drawer and the indorsers, and save himself from loss. (*d*)

What is not delivery?

To constitute a contract, there must be a delivery of the instrument by the maker, drawer or indorser, and as soon as this takes place, the contract is complete. A mere signature does not make a contract. (*e*) Until such delivery, there can be no cause of action on the instrument. Consequently, the place of delivery has been taken as the place where at least a part of the cause of action arose, and a suit in the Court of that place has been held to be good. (*f*) When only a half-note is sent by post, the property in the note remains in the sender, even though the other half-note was intended to be sent. (*g*) So essential is delivery in contracts on negotiable instruments that it has been held that where a promissory note the writing of which was unknown to the grantee, lay in the grantor's possession and was found among his papers after his death, the payee could not claim or sue upon it, even though such a note be accompanied with

(*a*) *Bank of Van Diemen's Land* v. *Bank of Victoria*, (1871) L. R. 3 P. C. 526; see *Bentinck* v. *Dorrien*, (1805) 6 East. 199, 201.

(*b*) *Pragdas* v. *Dowlatram*, 11 Bom. 257, 270.

(*c*) *Cox* v. *Troy*, (1822) 5 B. & Ald. 474; *Bromage* v. *Lloyd*, (1847) 1 Exch. 32; *Lloyd* v. *Howard*, (1850) 20 L. J. Q. B. 1.

(*d*) Daniel, sec. 493.

(*e*) *Abrey* v. *Crux*, (1869) L. R. 5 C. P. 37, 42; *Charles Marston* v. *Allen*, (1841) 8 M. & W. 494; *Thorappa Devanappa* v. *Umedmalji*, 25 Bom. L.R. 604.

(*f*) *Chapman* v. *Cottrell*, (1865) 34 L. J Ex. 186; see also *Mangamma* v. *Sathiraju*, 31 M. L. J. 816; *Ponnusami* v. *Damodar*, 47 Mad. 403.

(*g*) *Smith* v. *Mundy*, (1860) 29 L. J. Q. B. 172; *Koti Venkataramiah* v. *Official Assignee of Madras*, 33 Mad. 196.

Sec. 46.

written directions to deliver it to the payee. (*a*) But the case may be different if the directions are valid as a testament, or amount to a charge on the estate of the deceased. (*b*) Delivery to a stake-holder, (*c*) or to the transferor's own agent for delivery, (*d*) or putting the instrument into one's own office letter-box (*e*) is not such a delivery to the holder as is contemplated by the section.

Delivery by post.

Delivery may also be made by post, but to be effectual, it must be done only at the request of the party, or by an agreement with him. If, therefore, a bill is sent without authority and is lost, the title is still with the sender, (*f*) and he is liable to bear the loss. (*g*) If, however, the intended recipient either expressly (*h*) or impliedly (*i*) authorised such means of delivery, the sender is protected. Such authorisation may be implied from the course of dealings between the parties, (*j*) but it is said that because a person has been in the habit of sending cheques and hundis by post and that has not been objected to, a request cannot be implied from such conduct. (*k*) In all these cases, the question is, of which party is the post-office agent? It is submitted that if by the regulations of the post-office a letter once posted cannot be reclaimed as seems to be the case in India and in England, (*l*) then putting the instrument in the post-box, is sufficient delivery to the addressee. In such cases, the post-office is deemed to be the agent of the addressee. The rule will probably be different if the sender has the right to reclaim the letter, before it is actually despatched.

What is delivery?

Delivery according to the section may be actual or constructive, and is defined in the English Act as a transfer of possession actual or constructive from one person to another. (*m*) Actual delivery consists in actually handing over the instrument by one person to another or to an agent on his behalf, (*n*) that is, a change of actual possession is

(*a*) *Bromage* v. *Lloyd*, (1847) 1 Exch. 32; see *Gough* v. *Findon*, (1851) 7 Exch. 48.

(*b*) Re *Richards*, (1887) 36 Ch. D. 541. See Re *Whitaker*, (1889) 42 Ch. D. 119, 125

(*c*) *Latter* v. *White*, (1872) L. R. 5 H. L. 578.

(*d*) *Brind* v. *Hampshire*, (1836) 1 M. & W. 365; Ex. parte, *Cote*, (1873) L. R. 9 Ch. 27, 32.

(*e*) *Arnold* v. *Cheque Bank*, (1876) 1 C. P. D. 578, 584, 592.

(*f*) *Thorappa Devanappa* v. *Umedmalji*, 25 Bom. L. R. 604.

(*g*) *Lutges* v. *Sherwood*, 11 T. L. R. 233; *Thorappa Devanappa* v. *Umedmalji*, 25 Bom. L. R. 604.

(*h*) *Thorappa Devanappa* v. *Umedmalji*, 25 Bom. L. R. 604.

(*i*) *Norman* v. *Ricketts*, (1886) 3 T. L. R. 182; *Thairlwall* v. *Great Northern Ry.*, (1910) 2 K. B. 509; *Mitchell* v. *Norwich Union Life Insurance Society*, (1918) 1 K. B. 123 affirmed on appeal in (1918) 2 K. B. 67.

(*j*) Ex parte *Cote*, (1873) L. R. 9 Ch. 27.

(*k*) *Pennington* v. *Crossley*, (1897) 13 T. L. R. 513; *Jugjivandas* v. *Nagar Central Bank*, 50 Bom. 118.

(*l*) *Narasimhulu* v. *Adiappa*, 13 Mad. 242; Ex parte *Cote*, (1873) L. R. 9 Ch. 27; *Sichel* v. *Borch*, (1864) 33 L. J. Ex. 179.

(*m*) B. of Ex. Act, sec. 2.

(*n*) See sec. 47, illus. (a), *post*; *Powell* v. *Hellicar*, (1858) 26 Beav. 261. (delivery to agent of donee.).

Sec. 46.

Constructive delivery.

essential to it. In the case of constructive delivery, it is effected without any change of actual possession. Thus, a person who holds a bill on his own account may subsequently hold it as agent of another; or a person holding a bill as the agent of A may subsequently attorn to B and hold it as his agent; (*a*) or again, a person may hold a bill as the agent of another and may subsequently hold it as his own. In all these cases, delivery takes place without change of actual possession. Similarly, cases may be contemplated of a person making a gift of the instrument by declaring himself to be the trustee for, or to hold the bill or note for the benefit of, another. A direction to an agent who is in actual custody of an instrument to hold it subject to the payee's or indorsee's order, or an order to such person to deliver it to the payee or indorsee or a delivery without condition to a third person on account of the payee or indorsee, is sufficient delivery in the eye of law. A document, whereby the owner of a Government promissory note authorises a person to recover the note or its value from a person with whom it was deposited, operates as a virtual assignment of the promissory note. (*b*)

Delivery by whom?

Delivery to be effectual must be made by the party drawing, making, accepting, or indorsing, or by an agent on his behalf. So, if a party died leaving a negotiable instrument indorsed but not delivered, his legal representative cannot complete the contract by merely delivering the instrument, but he will have himself to indorse and then deliver; (*c*) for the legal representative cannot be the agent of the deceased person. Delivery by an agent without authority may not be effectual, but such defect may be cured by subsequent ratification by the principal even after an action is brought on the instrument. (*d*)

Assent of both parties.

It is essential to delivery that both parties to the transaction should assent to the transaction so that it may bind them. The mere fact that one person writes his name on the back of a bill and hands it to another does not necessarily constitute the latter an indorser, that is to say, in order to constitute a valid indorsement of a bill as against the indorser, there must be a writing of the name of the transferor and a delivery by him, not only to pass the property in it but also to guarantee payment if the acceptor makes default. As between immediate parties and also as regards a remote party other than a holder in due course, evidence of facts may be given showing

(*a*) *Cf.* Sec. 47, illus. (b), *post.*

(*b*) *Kottieth Ramunni* v. *Udayamangalath Mithale,* (1912) M. W. N. 524.

(*c*) Sec. 57, *post.*

(*d*) *Ancona* v. *Marks,* (1862) 31 L. J. Ex. 163.

Sec. 46.

the absence, of such intention, as for instance, that the parties were jointly interested in the bill and that the one indorsed to the other for the purpose of collection on joint-account. (*a*) Generally, in suits on negotiable instruments, the defendant may show the circumstances under which the delivery took place, such as, that the indorsement or any other contract on the instrument did not effect any transfer of a legal right to the indorsee or other transferee.

Delivery on a condition.

Thus, it may be shown that a bill was delivered to the payee, or that a bill was indorsed to the indorsee to take effect on certain conditions being complied with; for, evidence may be given of such agreement, even though oral, which constitutes a condition-precedent on which the performance of the written contract is to depend. (*b*) In that case, the evidence admitted shows no more than that an apparently completed contract is not so in fact. (*c*) Moreover, the annexing of such a condition to delivery is not an oral contradiction of the written obligation, for it needs a delivery to make the obligation operative at all; and the extent of the operation of the instrument, and the effect of the delivery may be limited by the condition under which the delivery is made. It is to be noticed that though a conditional delivery is valid, the condition attaches exclusively to the delivery, and this does not affect the rule that the bill or note must be made unconditional. A bill delivered conditionally is called an "*escrow*," a term usually applied to deeds, but by analogy applied to negotiable instruments. According to the section, it seems that a bill or note may be delivered to the payee or holder himself as an "*escrow*." Chalmers is of the same opinion, (*d*) though Daniel holds that it cannot be so delivered, for the evidence will be repugnant to the Act. (*e*) Paragraph 3 of this section, and section 92 of the Evidence Act are clear on the point, and support the view above indicated. In fact, it is said that there is no difference in substance but only in illustration and application between this section and proviso (3) to section 92 of the Evidence Act, and so it has been held that in a suit on a promissory note, the defendant may prove that the note was not given for a debt, but only as a voucher or collateral security for the capital contributed by the plaintiff towards a partnership of which both were members. (*f*) The evidence sought to

'Escrow'.

(*a*) *Denton* v. *Peters*, (1870) L. R. 5 Q. B. 475; *Sattamuthu* v. *Abdul Kareem*, (1932) M. W. N. 1149.

(*b*) Ind. Evidence Act, sec. 92, proviso (3). Cf. *Lindley* v. *Lacey*, (1864) 34 L. J. C. P. 7, 9; *Punjab National Bank* v. *Balkishan*, 6 Lah. L. J. 230.

(*c*) *New London Credit Syndicate* v. *Neale*, (1898) 2 Q. B. 487, 490; *Young* v. *Austen*, (1869) L R. 4 C. P. 553.

(*d*) Chalmers (10th Edn.) 65. Cf. *Guildford Trust* v. *Goss*, (1927) 43 T. L. R. 167.

(*e*) Daniel, secs. 68 (a) and 856.

(*f*) *Sheo Prasad* v. *Gobind*, 49 All. 464; *Bhogi Ram* v. *Kishori*, 50 All. 754.

be admitted must be that the instrument is not to take effect as a contract until some condition is fulfilled. The test is laid down in the following words by Lord Justice Vaughan Williams. "For lawyers practising under the old system of pleading, there was a convenient test in these cases as to whether the oral evidence which it was sought to give, was admissible. If the evidence were such as would support a plea of the general issue in an action of contract, like *non est factum*, that is to say, if it amounted to showing that though the defendant signed the instrument, he signed it on the understanding that it should not be an effective instrument until some condition was fulfilled, then it was admissible." (*a*) But, an agreement to renew the bill at maturity is not such evidence. (*b*)

Where a bill or note is delivered conditionally, the liability of the party delivering does not commence till the happening of the event or the fulfilment of the condition; but as soon as the conditions are complied with, the liability of the party comes into play. Thus, if a person makes a note in favour of his servant, and hands it to his solicitor telling him to retain the note till his death, and then hands it to the servant if he should still continue in service, then if these conditions are complied with, and the solicitor hands over the instrument to the servant, he can sue the administrators of his master's estate. (*c*) In this case, if the solicitor were to deliver the instrument to the servant, either before the death of the master, or after breach of the condition of continuation in service, the master is not liable to the servant, though in the case of a *bona fide* holder for value from him, it may be different. Again, it has been held that if the holder of a bill indorsed it in blank, and handed it over to the indorsee on the condition that he should forthwith retire certain bills, the indorsee without so retiring the bills could not sue the indorser, or even the acceptor, for they both could plead the defence of breach of condition. (*d*) The maker of a note can, in a suit against him by the payee, defend himself by proving that the note was delivered on the condition that it was to take effect on the payee's restoring him to a certain office which he failed to do. (*e*)

Delivery for a purpose.

Under the section, it may be shown also that the instrument was delivered for some special purpose. (*f*) Thus, if a holder indorses a

(*a*) *New London Credit Syndicate* v. *Neale*, (1898) 2 Q. B. 487.

(*b*) *Ibid.*

(*c*) Re *Richards*, (1887) 36 Ch. D. 541. Cf. Re *Whitaker*, (1889) 42 Ch. D. 119, 125.

(*d*) *Bell* v. *Ingestre* (1848) 12 Q. B. 317.

(*e*) *Jefferies* v. *Austin*, (1725) 1 Stra. 674.

(*f*) *Mutty Loll* v. *Dent*, 5 M. I. A. 328; *Sheo Prasad* v. *Gobind*, 49 All. 464.

Sec. 46.

bill to another specially for getting it discounted, and if such other person indorses the bill in breach of trust, the indorsee, if not a holder in due course, cannot sue the original indorser, or any other prior party, as they can set up the defence of the breach of trust of the original indorsee, and can plead that there was no delivery with intent to pass title. (*a*) In the same way, if one of two persons jointly interested in a bill indorses it to another for collection in joint-account, the latter cannot sue the former on the indorsement. (*b*) The maker of a note may show in a suit between him and the payee that he executed the note as collateral security for a running account and that the state of accounts at the time was in his favour ; (*c*) or that the promissory note sued on was executed and delivered only as security for the payment of future instalments to a chit fund ; (*d*) or that the note was intended as additional security for advances made on the security of goods, in case the latter proved insufficient. (*e*) The matter was considered in detail in Allahabad, (*f*) and it was pointed out that there was a distinction between a note of which the delivery is conditional and a note of which the delivery was for a special purpose. Mere postponement of the operation of the note, it is said, will not operate as a condition, but it may operate because the special purpose involves postponement and on that ground the case in *Woodbridge* v. *Spooner* (*g*) was distinguished. It was further held, that section 46 of the Act, being a special provision applicable to negotiable instruments, governs the matter, and not explanation 3 of section 92 of the Evidence Act, which is the general section applicable to deeds completed by signature. But when a note is given for goods and it is stipulated that the note should be paid irrespective of the goods, the principle has obviously no application. (*h*) So also in the case of a note given for capital supplied to a partnership of which the plaintiff and the defendant are partners, it has been held, that the note should be paid irrespective of the state of the assets of the partnership. (*i*) Moreover, if the person to whom the instrument was delivered conditionally or for a special purpose, misappropriates it, the true owner

---

(*a*) *Lloyd* v. *Howard*, (1850) 15 Q. B. 995 ; *Goggerley* v. *Cuthbert*, (1806) 2 Bos. & P. (N. R.) 170 ; *Charles Marston* v. *Allen*, (1841) 8 M. & W. 494, 504. Cf. *Barber* v. *Richards*, (1851) 6 Ex. 63.

(*b*) *Denton* v. *Peters*, (1870) L. R. 5 Q. B. 475.

(*c*) *Cf.* Ex parte *Twogood*, (1812) 19 Ves. 229 ; Re *Boys*, (1870) L. R. 10 Eq. 467 ; *Sundaram* v. *Damodaram*, (1924) M. W. N. 529.

(*d*) Reilly. J. in C. R. P. 358 of 26 (Mad.).

(*e*) *Bhogiram* v. *Kishori*, 50 All. 754 ; *Ramanadhan* v. *Gundu*, (1928) M. W. N. 680.

(*f*) *Bhogiram* v. *Kishori*, 50 All. 754.

(*g*) (1819) 3 B. & Ald. 233.

(*h*) *Radha Bihari* v *Alexander*, 2 Lah. 335 ; *Mcleod & Co.* v. *Ivan Jones & Co.* (1926) Cal. 189.

(*i*) *Uthira* v. *Muthu*, (1927) Mad. 68.

can recover the amount, if already realised, from him or from any other person taking it from him with notice of the conversion. (*a*)

It is to be noticed that these defences are available "as between such parties and any holder of the instrument other than a holder in due course." The words are ambiguous, but which ambiguity has been avoided in the English Bills of Exchange Act, section 21, by using the words "as between immediate parties and as regards a remote party." Having regard to the fact, that the two Acts were drafted by the same person, *viz.*, M. D. Chalmers and that no difference in law could have been intended, it has been decided in the Allahabad High Court (*b*) that the true meaning of the words is "between the maker and the payee or the indorser and the indorsee or the indorsee and any holder other than a holder in due course, or as between any one of such parties and any other." Of course, as will be seen the holder in due course is always protected against such defences.

It is to be remembered that the third paragraph of the section applies only to cases where the instrument is not transferred absolutely. The question as to how far contracts on negotiable instruments are affected by agreements contemporaneous, or subsequent, is treated separately for the sake of convenience, in the Appendix.

Not only is delivery an essential part of the contract of negotiation, but it is also necessary that the instrument should be in a deliverable state, that is, the instrument must be complete and regular on its face and if it is payable to order it must contain the necessary indorsement ; otherwise the transferee cannot sue on the instrument, in his own name free from the equities attaching to the transferor. Hence the last two paragraphs of the section. Therefore, where the plaintiff had become the holder in good faith and for value of a cheque payable to order, but had not obtained the indorsement in his favour, and where before he obtained such an indorsement he received notice that the cheque had been obtained from the defendant by fraud, it was held, that the plaintiff could not recover, as the instrument had not been put into a deliverable state before notice of the defects. It was said in the case, that the rule of giving the transferee a better title than the transferor is intended only to transfers whereby titles are acquired according to the Law Merchant, and the holder

(*a*) *Mutty Loll* v. *Launcelot Dent*, 5 M. I. A. 328 ; *Arnold* v. *Cheque Bank*, (1876) 1 C. P. D. 578 ; *North & South Wales Bank* v. *Macbeth*, (1908) 1 K. B. 13 affirmed, (1908) A. C. 137 ; see also *Bank of England* v. *Vagliano*, (1891) A. C. 107.

(*b*) *Bhogiram* v. *Kishori*, 50 All. 754.

Sec. 47. must, therefore, become a holder according to that law before he can obtain the benefit of that rule. (*a*)

The last two paragraphs of this section are repeated in the following two sections.

Negotiation by delivery.

47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

ILLUSTRATIONS.

(*a*) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

NOTES.

Transfer by delivery.

The section seems to be unnecessary, as paragraph 4 of section 46 provides how negotiable instruments payable to bearer are negotiated. A bill or note is said to be payable to bearer when it is expressly made payable to bearer, or when it is indorsed in blank, though originally it is made payable to order. When a transfer by delivery without indorsement is made, the name of the transferor is not on the instrument, consequently there is no privity of contract between him and any subsequent transferee, and he is not responsible thereon to the immediate party or any subsequent holder for the dis-

(*a*) *Whistler* v. *Forster*, (1863) 14 C. B. N. S. 248.

Sec. 47.

His obligation.

honour thereof. By not indorsing the instrument, a person is generally understood to mean that he will not be liable upon it. (*a*) However, by such transfer, he warrants by implication to his immediate transferee (being a holder for value):

(1) that the bill or note is what it purports to be, that is, that the signatures on the instrument are genuine, and that there has been no alteration in the terms of the document. (*b*) Thus, where the plaintiffs discounted with the defendants certain bills which the latter did not indorse and it turned out that the signatures of the drawer and the acceptors were forged, it was held that the defendants were liable to refund. For it was said, "if you take a bill without indorsement, you cannot sue the person from whom you receive it, but then you take it as a bill: but here, in fact, the instrument turns out not to be a bill of exchange as it was represented, being altogether a forgery, and that I conceive to be the distinction." (*c*) Similarly, where the defendants sold to the plaintiffs a navy-bill purporting to be drawn for £1,800, and it turned out that it had been altered to that amount from £800, which real sum the British Government paid, it was held that the plaintiffs could recover the balance from their vendors. (*d*) The liability of a transferor by delivery is not taken away by the fact that though some of the signatures are forgeries, others are not; especially if the signature on the strength of which the bill is taken, is a forgery (*e*) for, the seller of an instrument is supposed to offer the instrument drawn, accepted, or indorsed according to its purport, and if there is any breach of such implied warranty, he is liable to the transferee for the sum he received for it, on the ground of failure of consideration; but, the person, who acted merely as an agent of another in the matter of the transfer and that to the knowledge of the transferee, cannot be so sued, if the agent acted honestly and without any complicity with his master who committed the forgery. (*f*) In any case, the claim against the transferor must be made as early as possible. (*g*);

(2) that the instrument which he transfers denotes a valid and subsisting obligation binding in law between the parties to it. (*h*) Thus, where an unstamped bill on its face being a foreign bill, and so not requiring stamp, was afterwards found to be an inland bill void for

(*a*) B. of Ex. Act, sec. 58 (2).
(*b*) *Ibid*, sec. 58 (3).
(*c*) *Fuller* v. *Smith*, (1824) 1. C. & P. 197, per Abbot, C. J.
(*d*) *Jones* v. *Ryde*, (1814) 5 Taunt. 487; *Leeds and County Bank* v. *Walker*, (1883) 11 Q. B. D. 84.
(*e*) Cf. *Gurney* v. *Womersley*, (1854) 4 El. & Bl. 133.
(*f*) Ex parte *Bird*, (1851) 4 De G. & S. 273.
(*g*) *Mathews* v. *Girdharlal*, 7 Bom. H. C. R. (O. C. J.) 1.
(*h*) Daniel, sec. 732.

Sec. 47.

want of stamp, the transferee by delivery of such instrument was held to be entitled to recover the price paid from his assignor. (*a*) Coleridge, J. when deciding the above case, said: "The vendor was not bound to see that he sold a bill of good quality, or to answer for the insolvency of the parties, but the vendee is still entitled to have an article answering the description of that which he bought"; and in the same case Lord Campbell, C. J. said, "the case is precisely as if a bar was sold as gold, but was in fact brass, the vendor being innocent. In such a case the purchaser may recover";

(3) that the parties whose names appear on the face of the instrument are competent to contract; for, otherwise, it cannot be the paper of that person whose paper it purports to be. (*b*) In such a case, the transferor is liable to pay the amount he received on breach of such warranty. The purchaser of the negotiable security has a right to believe that it is made, indorsed or accepted by persons capable of binding themselves. If any of the parties is a fictitious person, the transferor is bound to reimburse the transferee;

(4) that he is a lawful holder, having a just and valid title to the instrument, and has a right to transfer it by delivery. (*c*) If the transferee is unable to recover against the true owner, he may sue his transferor for the consideration paid. It is to be noted, however, that the transferee by delivery acquires a better title than his own transferor, if he takes the instrument *bona fide*, for consideration, and before its maturity;

(5) and lastly, that he has no knowledge of any facts which may render the instrument valueless, that is, the insolvency of parties, or the discharge of the instrument, or its having become void or defunct. (*d*) For the transferor to conceal such facts, if known to him, will be a manifest fraud committed on the other party.

This warranty of genuineness, etc., implied in a transfer by delivery can be relied on only by an immediate party, and no subsequent party can sue the transferor either on the instrument or on the consideration. (*e*)

(*a*) *Gompertz* v. *Barlett*, (1853) 2 El. & Bl. 849; *Martin* v. *Morgan*, (1819) 3 Moore 635; *Young* v. *Cole*, (1837) 3 Bing. N. C. 724; *Kennedy* v. *Panama Mail Co*, (1867) L. R. 2 Q. B. 580, 587; *Lamert* v. *Heath*, (1846) 15 M. & W. 486; *Cf. Pooley* v. *Brown*, (1862) 11 C. B. N. S. 566 (where, in a foreign bill, the stamp was not cancelled through the default of both parties.)

(*b*) Daniel, sec. 734.

(*c*) B. of Ex. Act, sec. 58 (3); *Cf.* Ind. Contract Act, sec. 109.

(*d*) *Martin* v. *Morgan*, (1819) 3 Moore. 635. Cf. *Fenn* v. *Harrison*, (1790) 3 T. R. 757, 759. See also 3 American Ruling Case Law, sec. 382.

(*e*) *Gurney* v. *Womersley*, (1854) 24 L. J. Q. B. 46; Cf. Ex parte *Bird*, (1851) 4 De G. & S. 273.

Sec. 47.

Not liable as an indorser.

Except for the liabilities mentioned above, the transferor is exempt from the other obligations and responsibilities attaching to an indorser of an instrument. He does not warrant the solvency of the parties to the instrument, nor does he hold himself liable to pay in the event of dishonour by the maker or the acceptor. In such cases, it is now well settled that when the transfer takes place without indorsement, the transaction is of the nature of a sale of the instrument. The transferee has, in general, no right of recovery against his transferor upon the instrument, nor can he recover back the amount paid by him on the failure of consideration, (*a*) unless there is an express contract to pay on default. (*b*) For, as said by Lord Kenyon, "it is extremely clear that, if the holder of a bill sent it to market without indorsing his name upon it, neither morality nor the law of this country will compel him to refund the money for which he sold it, if he did not know at the time he sold it, that it was not a good bill"; (*c*) or, as said by him in another case, (*d*) "having taken them without indorsement, he has taken the risk on himself; the bankers were the holders of the bills, and by not indorsing them, they refused to place their credit to their validity, and the transferee must be taken to have received them on their own credit." But there can be no doubt that if a person sells a bill for a sufficient consideration knowing it to be of no value, and the buyer is not aware of that fact, the seller will be liable to repay the price he receives for it, for, on the same high authority, "if he knew the bill to be bad, it would be like sending a counterfeit coin for circulation to impose upon the world instead of the current coin." (*e*)

His liability on the original consideration.

The liability of a transferor by delivery of a negotiable instrument for valuable consideration, whether antecedent or concomitant, depends on the nature of the transaction; evidence may be given to show whether the transfer was meant to be a complete discharge of the original debt, or only a conditional payment. As already remarked, putting a bill in the market is *prima facie* a sale of the bill to which the maxim *caveat emptor* applies, and the transferor by delivery will not be liable on the consideration. Moreover, if a bill payable to bearer is delivered in payment of goods bought, or for a consideration passing at the same time as the transfer of the instrument, the transaction will be deemed to be a sale of the bill. (*f*) On the other hand,

(*a*) *Bank of England* v. *Newman*, (1699) 1 Ld. Raym. 442.

(*b*) *Bank of England* v. *Glover*, 2 Ld. Raym. 753.

(*c*) *Fenn* v. *Harrison*, (1790) 3 T. R. 757.

(*d*) *Fydell* v. *Clark*, (1796) 1 Esp. 447.

(*e*) *Fenn* v. *Harrison*, (1790) 3 T. R. 757; see also *Read* v. *Hutchinson*, (1813) 3 Camp. 352; *Evans* v. *Whyle*, (1829) 5 Bing. 485.

(*f*) *Ward* v. *Evans*, (1703) 2 Ld. Raym. 928, 930; *Camidge* v. *Allenby*, (1827) 6 B. & C. 373; *Dargavarapu* v. *Rampratapu*, 25 Mad. 580.

Sec. 48. if the instrument payable to bearer is delivered on account of a pre-existing debt, and it can be shown that the parties intended it not to operate in full and complete discharge of that debt, the transferee may sue his transferor on the original consideration. (*a*) But to do so, the transferee must use reasonable diligence in trying to obtain payment. (*b*) Even delay in making the claim will be a good defence in such a suit. (*c*) This subject is dealt with at fuller length in an Appendix, at the end of the book.

Exception.

The exception to the section enacts a provision similar to that in paragraph 3 of section 46. The general provision in section 46 cannot apply to this section, as section 46 deals with the making, accepting and indorsing a negotiable instrument. There is no question of indorsement as regards bearer instruments, and hence the necessity of the exception to this section. The result of the exception may be stated thus : if a bill or note is delivered on a condition that it is not to take effect except on the condition being fulfilled, then such note or bill is not negotiable except in the hands of a holder for value without notice, that is to say, any person, other than such a holder, cannot acquire title to the bill or note and cannot sue on it the prior parties, before the fulfilment of the condition or the happening of the event.

Whether a person taking such an instrument before the happening of the event, can sue the prior parties after the event has happened is not clear. The case being one of no title, it is submitted that he cannot, unless it can be taken that the initial want of title is cured by the condition being fulfilled. Again, it is not clear whether the exception applies to a person taking an instrument (made payable to bearer and delivered on a condition) for value and without notice of the condition, but after maturity. The provisions of section 58, to which this section is subject, do not make the point clearer, as they do not refer to conditions under which an instrument may have been delivered.

Negotiation by indorsement.

48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

(*a*) *Timmins* v. *Gibbins*, (1852) 18 Q. B. 722 ; *Maung Kyi* v. *Ma Ma Gale*, 10 L. B. R. 54.

(*b*) *Fenn* v. *Harrison*, (1790) 3 T. R. 757.

(*c*) *Rogers* v. *Langford*, (1833) 1 Cr. & M. 637.

NOTES

The present section is the result of an amendment by section 4 of the Negotiable Instruments (Amendment) Act VIII of 1919, which substituted the words 'to order' for the words "to the order of a specified person, or to a specified person or order."

Transfer of bills, etc., payable to order.

If a bill of exchange, promissory note or cheque be payable to order, such an instrument is transferable only by indorsement and delivery thereof, and a verbal assignment of such a note is not recognised by the Law Merchant. (*a*) In no other way will the transferee be clothed with all the rights of a holder in due course under the Act. Where the holder transfers an instrument payable to order without indorsing it, the transferee is in no better position than an assignee of an ordinary chose-in-action. If the transferee paid value for the transfer, he acquires the right to have an indorsement of the transferor, (*b*) which may be enforced by action; (*c*) and if the transferor is dead, his executor or administrator may be compelled to complete the transfer by indorsement. (*d*) Until such indorsement in his favour, the transferee cannot sue on the instrument in his own name, nor can he negotiate it to a third party. (*e*) From the mere fact of delivery of a bill payable to A or order, an authority from A to the person to whom he delivered the bill to indorse it in his name cannot be inferred; and if the transferee writes on the bill the name of the transferor, it is an unauthorised signature, and as such wholly inoperative.

Assignment as a chose-in-action.

It is to be observed that the Act deals only with transfers of negotiable instruments in accordance with the rules of the Law Merchant. This, does not however, interfere with the rules relating to assignments of choses-in-action. As a bill or note is a chose-in-action, it may be transferred by assignment or sale subject to the same conditions as are required in cases of ordinary choses-in-action. (*f*)

(*a*) *T. A. R. A. R. M. Chetty Firm* v. *Solomon*, 55 I. C. 718; but see contra *Pannalal* v. *Hargopal*, 51 I. C. 250 (Lah); *Babu Goridut* v. *Ebrahim*, 14 Bur. L. R. 25 at 29, 30.

(*b*) *Walters* v. *Neary*, (1904) 21 T. L. R. 146.

(*c*) See *Rose* v. *Sims*, (1830) 1 B. & Ad. 521.

(*d*) See *Watkins* v. *Maule*, (1820) 2 Jac. & W. 237, 243.

(*e*) *Harrop* v. *Fisher*, (1861) 10 C. B. N. S. 196.

(*f*) See notes on page 80 *ante*; *Muthukrishna* v. *Veeraraghava*, 38 Mad. 297; *Muthar* v. *Kadir*, 28 Mad. 544; *Sugappa* v. *Govindappa*, 12 M. L. J. 351; *Ramachandra* v. *Kuppuswami*, 8 M. L. J. 262; *Muhammad Khumarali* v. *Rangarao*, 24 Mad. 654, 657 (note); *Udayar* v. *Muthia*. 7 M. L. J. 231; *Arunachala* v. *Subba*, 17 M. L. J. 393; *Benode Kishore* v. *Asutosh*, 16 C. W. N. 666; *Narayanamoorthi* v. *Vumamaheswar*, (1930) Mad. 197 (where the conflict between the earlier and later cases is noticed); *Venkatarama* v. *Krishnaswami*, 35 L. W. 755.

Sec. 49.

Such an assignment should be in writing, and the assignee takes it subject to all the equities that arise between the party liable and the assignor. (*a*) Where, however, the Transfer of Property Act is not in force, an oral assignment is possible. (*b*) Even in Madras where the Act is in force, it was held that the negotiable instrument can be transferred orally. (*c*) This is wrong and is opposed to the trend of the decisions in this court. (*d*) Where the shebait of an idol to which through its pujari a promissory note was handed over by the payee thereof, without indorsement or without transfer, it was held there was no completed transfer of the instrument either as a negotiable instrument or as an actionable claim (*e*); where a non-negotiable pro-note was assigned by the payee to his creditor as security for his debt until its repayment, it was held that the assignment was conditional and would not enable the assignee to maintain an action on the note in his own name against the maker to recover the amount thereof; (*f*) but a purchaser of a promissory note in court auction, who has obtained a vesting order before the date of his decree, is entitled to sue on the note even though there is no indorsement on it. (*g*) It has been held that a promissory note payable to payee or order cannot be negotiated by mere assignment by the payee of all his property including the note; (*h*) but this decision has not been fully followed in later cases. (*i*) Indorsement of a promissory note not negotiable, coupled with delivery, is enough to effect an assignment of the chose-in-action evidenced by the promissory note. (*j*) This section is subject to the provisions of section 58 which deals with the circumstances under which a holder is disentitled to recover or negotiate.

Conversion of indorsement in blank into indorsement in full.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a

(*a*) See the cases under note (*f*) in page 229. Transfer of Property Act, secs. 130 to 137; *Palawan* v. *Kanu*, 66 I. C. 501; Cf. *Embiricos* v. *Anglo-Austrian Bank*, (1905) 1 K. B. 677.

(*b*) *Locha Ram* v. *Hem Raj*, (1932) Lah. 30; *Panna Lal* v. *Hargopal*, 51 I. C. 250.

(*c*) *Venkatadri* v. *Lakshminarasimha*, 21 M. L. J. 80.

(*d*) *R. M. A. R. Raman* v. *Nagarathna*, 11 M. L. T. 246; *Arunachala* v. *Subba*, 17 M. L. J. 393.

(*e*) *Akhoy Kumar* v. *Haridass*, 19 C. L. J. 335; see also *Ulagappa* v. *Ramanathan*, 3 L. W. 171; *Raman* v. *Nagarathna*, 11 M. L. T. 246; but see *Venkatadri* v. *Lakshminarasimha*, 21 M. L. J. 80; *Lodd Govind Das* v. *Munuswami*, 9 M. L. T. 169.

(*f*) *Nihal Chand* v. *Ali Baksh*, 9 P. R. 1907.

(*g*) *Kuthulingam* v. *Packiyam Fernandez*, 21 M. L. J. 422.

(*h*) *Abboy* v. *Ramachandra*, 17 Mad. 461; *Pattat Ambadi Marar* v. *Krishnan*, 11 Mad. 290.

(*i*) *Muthar* v. *Kadir*, 28 Mad. 544.

(*j*) *Rama* v. *Venkatachellam*, 16 M. L. J. 554; *Kanhaiya* v. *Domingo*, 1 All. 732.

direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Sec. 49.

NOTES.

Indorsements in blank, and indorsements in full are defined in section 16 *ante*.

When a person receives a negotiable instrument indorsed in blank, he may write over it a direction making it payable to another person, or his order; and in such a case, the person is not liable as an indorser on the bill. (*a*) The transferee takes it as against the acceptor, or any other person whose name appears on the bill, with all title which the intermediate indorser possessed. (*b*) As may be seen, the chief advantage of such a course is that the person transferring does not incur all the liabilities of an indorser. Though the Act is silent on the point, the holder of a bill may convert a blank indorsement into a full one in his own favour, and in that case, he will be held to have elected to take the bill or note as an indorsee. (*c*)

Striking out blank indorsements.

The authority to convert is limited to what is stated in the section, so that an indorsee of a negotiable instrument may not fill up the blank indorsement with a promise to pay, without presentment or notice of dishonour (*d*) or so as to indicate the rate of exchange at which, and the date when the instrument is payable (*e*) In an instrument with several blank indorsements on it, the holder may strike out any indorsement which he finds unnecessary for his purposes. (*f*) This is generally done when there is any difficulty of proving any of the indorsements on the instrument. But if he strikes out any indorsement, all the subsequent indorsers are discharged, as he deprives them of their recourse against the person whose name is struck. Moreover, the holder cannot strike out any special indorsement and substitute his name, as such substitution will defeat the very object of a special indorsement. Daniel thinks that if a person fills an early blank indorsement, he does not thereby discharge subsequent

(*a*) *Vincent* v. *Horlock*, (1808) 1 Camp. 442; *Hirschfeld* v. *Smith*, (1866) L. R. 1 C. P. 340, 353.

(*b*) *Fairclough* v. *Pavia*, (1854) 9 Ex. 690.

(*c*) *Clark* v. *Pigot*, (1699) 12 Mod. 139.

(*d*) 3 American Ruling Case Law, sec. 191.

(*e*) *Hirschfeld* v. *Smith*, (1866) L. R. 1 C. P. 340.

(*f*) *Low* v. *Copestake*, (1828) 3 C. & P. 300; *Callow* v. *Lawrence*, (1814) 3 M. & S. 95; *Marimuthu* v. *Krishnasami*, 17 Mad. 197; *Subramanian* v. *Alagappa*, 30 Mad. 441.

Sec. 50.

blank indorsers. (*a*) It seems to be even unnecessary that the names should be actually scored out before putting the bill into court; thus, where the plaintiff converted a blank indorsement into a special indorsement by putting on it the name of the same person, and he brought the suit against the drawer without striking out his name or getting an indorsement from him, it was held that the suit was maintainable. (*b*)

Effect of indorsement.

50. The indorsement of a negotiable instrument followed by the delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser or for some other specified person.

ILLUSTRATIONS.

B signs the following indorsements on different negotiable instruments payable to bearer :—

(a) "Pay the contents to C only."

(b) "Pay C for my use."

(c) "Pay C or order for the account of B."

(d) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(e) "Pay C."

(f) "Pay C value in account with the Oriental Bank."

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

NOTES.

It is said that there may be three distinct legal effects produced by an indorsement of a bill (1) the transfer of a *jus in rem*, that is, the property in the bill which may be the subject of an action of trover

(*a*) Daniel, sec. 694 (a).
(*b*) *Veerappa* v. *Muthuraman*, 12 L. W. 12.

or replevin, (2) the transfer of a *jus in personam*, that is, the right to recover the amount from the acceptor, and (3) the creation of a new *jus in personam*, the right to recover from the indorser and those above him on dishonour, provided that requisite proceedings on dishonour are duly taken. (*a*) To this must be added the right of further negotiating the bill. The transfer of a negotiable instrument carries with it as an incident, the right of the transferee to the possession of the paper on which the bill is written; in fact, as has already been seen, an indorsement of a negotiable instrument is not complete without delivery thereof, actual or constructive, to the indorsee. (*b*) The possession of the instrument is *prima facie* evidence that the holder is the owner thereof and entitled to all the rights thereon. The right of the holder to continue to hold and retain possession of the bill resembles generally the right belonging to the possessor of any other chattel, and depends upon the validity and nature of his title. The finder of a bill is entitled to retain it against all except the true owner, a pledgee until redemption, and a donee or purchaser of the bill will be entitled to it absolutely. If any person retains the bill adversely to the holder and refuses to give it up, he may bring a suit for the possession thereof.

This possession is necessary to the holder not only as evidence of his title to the bill, but also for the purpose of enforcing his rights against the other parties. On presentment for payment, the acceptor of the bill or maker of the note is entitled to ask for the return of the bill or the note and if not produced, he may well refuse payment of the amount except in the case of loss, in which case he is entitled to indemnity. The instrument is also necessary for the holder exercising his right of further negotiation. If it is a bill payable to bearer, delivery of the instrument by him is necessary, and if a bill is one payable to order, an indorsement and delivery are necessary, and an indorsement to be valid must be on the back of the instrument. In either case, possession of the bill is essential.

The indorsement of a negotiable instrument and delivery thereof clothes the transferee with the right to present it for acceptance if necessary, and demand payment of the same on its due date, and on dishonour he has the right to sue on the bill in his own name all the parties to the instrument. The indorsement of an instrument even for collection passes the legal title to the transferee so as to enable him to demand, receive and sue for the money to be paid. It

(*a*) Falconbridge on 'Banking' (4th Edn.) p. 929.
(*b*) Sec. 46, *ante*.

Sec. 50. may be that the indorsee is bound to account to the indorser, but it does not justify the defendant to challenge the plaintiff's right to sue upon it. Similarly, actions can be maintained by agent, trustee or executor on an instrument, provided the full legal title vests in him by a proper indorsement, notwithstanding that he may not have a beneficial interest in its proceeds. Even a pledgee can sue and recover the whole of the amount due in full; only he may be liable to the pledgor for the balance, after satisfying his debt.

On the question whether by an indorsement the right to the debt vests in the transferee so as to enable him to sue not only his transferor, but also persons whose names do not appear on the bill but who are in law liable for the debt, the authorities are not uniform. It has been held, that the indorsee of a promissory note executed by the managing member of an undivided Hindu family cannot sue the other members of the family, and he can only sue the maker of the note or his legal representative after his death, in as much as the mere indorsement is not an assignment of the chose-in-action; (*a*) but in some other cases the right of an indorsee to sue the other members of the family on a note executed by an younger member of the family has been recognised, on proof that the debt for which the promissory note was executed was binding on the family. (*b*) It is submitted that a transfer by an indorsement, vests in the indorsee a right of action only as against the parties whose names appear on the bill, and the indorsement does not entitle him to sue third parties on the original consideration. The fact, that the indorser can maintain an action on the debt against the other members of the family on the ground of Hindu Law liability would, we venture to submit, be absolutely irrelevant, in fixing the rights of an indorsee of a bill or a note. It is too late in the day to ignore the vital distinction between an action on the bill and an action on the debt or the consideration. (*c*) An action on the original consideration will obviously lie only as between the immediate parties to the bill or note. This is clearly brought out in England in cases where an infant

(*a*) *Seetharama* v. *Seshiah*, (1912) M. W. N. 1011; *Kuttee Ammu* v. *Purushotham*, 21 M. L. J. 526; *Shanmuganatha* v. *Srinivasa*, 40 Mad. 727; Cf. *Visvasankara* v. *Kasi*, 21 L. W, 25; *Maung Pho Mya* v. *Dawood & Co.*, 66 I.C. 584; see also *Gura Sahu* v. *Tangi Krishnamma*, 36 L. W. 432 (per Madhavan Nair J.); *Ram Jas* v. *Shahabuddin*, (1927) Lah. 89.

(*b*) *Raghunathji* v. *The Bank of Bombay*, 34 Bom. 72; *Krishnanand* v. *Rajaram*, 44 All. 393; *Baisnab* v. *Ramdhon*, 11 C. W. N. 139; *Krishna* v. *Krishnasami*, 23 Mad. 597; *Sanka Krishnamurthi* v. *Bank of Burma*, 35 Mad. 692; *Nataraja* v. *Ayyasawmi*, 32 M. L. J. 354; *Thankammal* v. *Kunhamma*, 37 M. L. J. 369; *Venkatakristnaiah* v. *Atyam Subbiah*, 41 M. L. J. 554.

(*c*) *Ram Gopal* v. *Dhirendra*, 54 Cal. 380; *Hari Mohan* v. *Sourendra*, 41 C. L. J. 535.

executes a note or gives a bill for what are called necessaries. It has long been settled that an infant is not liable on his bill or note executed for necessaries. The infant may be liable on a *quantum valebant* for the value of the necessaries, but a note for the amount is not binding, because this determines the amount positively and it is necessary for the infant's effectual protection that this should always be open to inquiry. The liability of the infant, therefore, is upon the consideration and not upon the instrument. Thus, if a person who supplied the necessaries, indorses the instrument to another, the latter cannot sue nor present a bankruptcy petition against the infant founded on the debt alleged to be due to him, as neither the indorsee nor the indorser could succeed without evidence of the supply of necessaries. (*a*) The reason for the indorsee not recovering anything is because the indorsement does not pass title to the consideration but only the right to enforce the promise on the bill or the note. It might be pressed that the indorsement of a negotiable instrument followed by delivery, transfers to the indorsee "the property therein," but it is submitted that these words cannot possibly mean anything more than the right to the amount specified in the bill or note by an action thereon for himself and in his own name. (*b*) But, the preponderent view seems to be to the contrary ; it must, however, be pointed out that the case *Krishna* v. *Krishnasami* (*c*) on which the later cases are based, is itself rested on the analogy of the liability of the husband on the note executed by the wife, and reliance is based for this purpose on the case of *Mitchinson* v. *Hewson*. (*d*) This case is not a case of promissory note but merely a case of debt, and there seems to be always a difference even in the case of married women between contracts made by them by means of bills, notes and cheques, and contracts in other ways. (*e*) It is also to be noticed that the case in *Krishna* v. *Krishnasami* (*f*) was by the payee and not by an indorsee from him. Further, the reliance placed in the case of *Nataraja* v. *Ayyasawmi* (*g*) on the decision of the Privy Council in *Karmali Abdulla* v. *Vora Karimji* (*h*) is based upon an entire misreading of that decision, for in that case the suit was not on the note by one of the partners against the others, but only a suit by one of the partners against the others for contribution, after the liability on

(*a*) In re *Soltykoff*, Ex parte *Margrett*, (1891) 1 Q. B. 413, and cases therein cited. Cf. *Bateman* v. *Kingston*, (1880) 6 Ir. L. R. C. L. 328 ; Byles, (19th) Edn.) 47.

(*b*) Cf. *Maung Pho Mya* v. *Dawood, & Co.*, 66 I. C. 584.

(*c*) 23 Mad. 597.

(*d*) (1797) 7 T. R. 348.

(*e*) See 16 Halsbury (I Edn.) secs. 835, 845 & 846.

(*f*) 23 Mad. 597.

(*g*) 32 M. L. J. 354.

(*h*) 39 Bom. 261, at pages 273, 274 ; see also notes on page 128, *ante*.

Sec. 50.

the hundi had been discharged completely. The subject has to be reviewed in the light of the clear and unambiguous decision of the Privy Council in *Sadasuk Janki* v. *Sri Kishan* (*a*), that no person can be sued on a promissory note except the person whose name appears on the note. (*b*) No difficulties can, however, arise in ascertaining the rights of an indorsee if the bill or note is executed and signed by the manager of a joint family as such, since in that case the credit would have been given to the joint family. In this connection it may not be out of place to note that, although the property in a cheque passes upon its execution and delivery, the property in the money does not pass until the cheque is cashed.

Restrictive indorsement.

As a general proposition, a person who has become the holder of a negotiable instrument is entitled to transfer the same to others by way of further negotiation unless the instrument was in such a form that in its inception it is not negotiable or it is restricted from being indorsed. How such restriction can be made, is really indicated by the latter portion of the section. The section, as it stands, is not restricted in its operation to negotiable instruments payable to order. As is clear from the illustration to the section, the section applies equally to instruments whether payable in the first instance to order or to bearer; and the negative argument that a special provision is not made in the Act to that effect, while the legislature thought fit to do so under section 54 of the Act in the case of cheques, cannot be made the ground for restricting the operation of section 50 which is wide in its terms. (*c*) But, to have the effect of restriction prohibiting further transfer, it is necessary that very plain words to that effect must be used. It is important that a mercantile instrument should not be an embarrassing document, so much so Lord Lindley, L. J. said: "I am not satisfied that any words other than the words 'not negotiable' which are prescribed by the Act will be sufficient to make such a cheque not negotiable." It was held in that case that a cheque payable to order cannot be said to be restricted in its negotiability, by the drawer of a cheque crossing it with the words "account payee" and indicating the bank. (*d*) As a general rule, where from the terms of an indorsement no acc ountability can be inferred between the indorser and the indorsee, the indorsee is full holder of the instrument entitled to bring a suit in his own name. (*e*) As stated al-

(*a*) 46 Cal. 663.

(*b*) See *Ram Gopal* v. *Dhirendra*, 54 Cal. 380; *Hari Mohan* v. *Sourendra*, 41 C. L. J. 535; *P. R. M. P. R. Chettyar* v. *Muniyandi*, 10 Rang. 257. Cf. *Vithal Rao* v. *Vithal Rao*, 25 Bom. L. R. 151.

(*c*) *Forbes, Forbes Campbell* v. *Official Assignee*, 27 Bom. L. R. 34.

(*d*) *National Bank* v. *Silke*, (1891) 1. Q. B. 435; *Babu Goridut* v. *Ebrahim*, 14 Bur. L. R. 25.

(*e*) *Patoju Sangayya* v. *Patoju Sanyasi*, 23 I. C. 545 (Mad.); *Ghulam Mohiuddin* v. *Ram Ditta*, (1930) Lah. 248

ready, a bill or note may be indorsed to another and deposited with him as trustee for some special purpose; in which case, he can use it only in conformity with the stipulations under which he became the depository. "Such trust or special purpose for which the instrument was given, may be often expressed on it by a restrictive direction appended along with the payee's or indorser's name, so that into whosoever hands it may come, the party will have notice of the trust or of a special purpose appearing on its face. Such indorsements are called restrictive indorsements, which prohibit the right of further negotiation by the indorsee." The relation in that case between the indorser and the indorsee is substantially that of the principal and agent. The illustrations to this section are all taken from decided English cases, and give instances as to when the indorsement restricts the right of further negotiation and when not. Care must, however, be taken not to give too much weight to these illustrations, and the Courts will satisfy themselves that these illustrations are not opposed to the provisions of the section to which they are appended, before applying them to the facts of any case. (*a*)

Under the section, indorsement alone does not vest the property in the instrument to the transferee; in order to have that effect, the indorsement must be followed by delivery, and section 46 provides that it may be shown that such delivery was made conditionally or for a special purpose only, and not for transferring absolutely the property therein. (*b*) This restriction in the title of the transferee may also be by express words in the indorsement itself.

Its effect.

The effect of a restrictive indorsement is generally any one of the following:—

(1) It prohibits further negotiation. For example, when the indorsement is "pay C only," the bill becomes payable only to C, and C cannot indorse it away to somebody else. (*c*) If he does indorse, the original indorser is not liable to such transferee. If the indorsement is merely "pay C," the omission to add words of negotiability to such special indorsement does not make it restrictive, and C can indorse it away. (*d*)

(2) It may merely constitute the indorsee an agent of the indorser for a special purpose, such as, to receive its contents. For example,

---

(*a*) *Dubey* v. *Ganeshi*, 1 All. 34; *Nanak* v. *Mehin*, 1 All. 487, 496; *Koylash* v. *Sonatun*, 7 Cal. 132; *Shaikh Omed* v. *Nidhee*, (1874) 22 W. R. 367.

(*b*) See notes to sec. 46, *ante*.

(*c*) Illus. (a); *Edie* v. *East India Co.*, (1761) 2 Burr. 1216, 1226.

(*d*) Illus. (e).

Sec. 50.

where the indorsement is "pay C for my use," or "pay C or order for my use," or "on my account," (*a*) these words indicate that the indorsee paid no consideration and is empowered only to collect the money on behalf of the indorser. He can neither transfer it to a third person, nor hold the indorser liable to him.

(3) It may vest the title in the indorsee in trust for, or for the use of, some other person, as where the indorsement is "the within must be credited to D," (*b*) or the indorsement is "Pay C or order for the account of B." In the former case, the indorsement was held to be restrictive of negotiability; in the latter case, it was held that C could indorse and that the indorsee could sue the drawer, on the ground that B had only an equitable interest and not one at law to have the money. (*c*) Again where A remitted to B a bill indorsed to him "Pay to order of B under provision for my note in favour of C, payable at the house of B", and B realised the proceeds and refused to pay them over to C; it was held that B was not liable to C, though he may be liable to A. (*d*)

Rights of restrictive indorsee.

In all cases of restrictive indorsements, the indorsee can sue all parties that his indorser can have sued. An indorsee for collection though he has not the property in the bill, is entitled to bring a suit on the note, (*e*) and the amount is to be paid to him even after the indorser's death. (*f*) But he himself has no right to transfer the instrument to an indorsee unless it expressly authorises him to do so, in which case the power of transfer can be exercised only in accordance with the express terms of the authority. (*g*) In such cases, the transferee from the restrictive indorsee takes the instrument with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement. (*h*) The restrictive indorsee being thus an agent of the indorsee for the special purpose, any party sued by him can raise all defences against him which are available to him as against the restrictive indorser. (*i*) If payment had been made to the indorser, the indorsee cannot sue him.

(*a*) Illus. (b); *Lloyd* v. *Sigourney*, (1829) 5 Bing. 525; *Snee* v. *Prescott* (1743) 1 Atk. 245, 247; *Edie* v. *East India Co.*, (1761) 2 Burr. 1216, 1226; *Treutell* v. *Barandon*, (1817) 8 Taunt. 100; *Williams, Deacan & Co.* v. *Shadbolt*, (1885) 1 Cab. & E. 529.

(*b*) *Ancher* v. *Bank of England*, (1781) 2 Doug. K. B. 637.

(*c*) *Evans* v. *Cramlington*, (1687) 2 Show, 509.

(*d*) *Wedlake* v. *Hurley*, (1830) 1 Cr. & J. 83.

(*e*) *Subramanian* v. *Alagappa*, 30 Mad. 441, 443.

(*f*) *Ramzan* v. *Vellasawmi*, 8 I. C. 967.

(*g*) *Evans* v. *Cramlington*, (1687) 2 Show. 509.

(*h*) *Cf.* B. of Ex. Act, sec. 35 (3); see *Mutty Loll* v. *Launcelot Dent*, 5 M. I. A. 328.

(*i*) *Bhuput* v. *Hari Prio*, 5 C. W. N. 313.

Sec. 51.

An indorsement for use or collection, not being an actual transfer of the instrument, may be recalled at pleasure. Thus, where a hundi drawn in favour of the plaintiff was indorsed in favour of a third person for collection, and when the amount not having been collected, the plaintiff sued on the hundi, which however was not re-indorsed to him, it was held that the plaintiff was entitled to maintain the suit, as the indorsement was conditional and for a specific purpose only. (*a*) Similarly, where a promissory note was indorsed to one of the debtors but not for consideration, the original payee was held to have a right to bring a suit on the note, striking out the indorsement. (*b*) But if a man to whom a bill is transferred, sends it back as useless, that will be regarded as an abandonment of his right as transferee, and he cannot by getting the bill again into his hands acquire a right to sue without a new transfer, though a fresh indorsement may not be necessary. (*c*) Again, an indorsement for collection made by the payee is cancelled by a subsequent indorsement by him to another indorsee for value. (*d*) Recently, a practice has grown up among merchants to draw cheques in the form "Pay A. B. per X," a form mostly used in the case of collection of dividends by a bank for its customers, and sometimes also when an agent is intended to receive the money for the principal. In all these cases, the intention is clear that payment is to be made to A.B., but only through the instrumentality of X who also is to receive the money and give a discharge. (*e*)

What is not restrictive?

A mere statement in the indorsement, of the consideration for it, does not render it restrictive. Illustrations (f) and (g) are such instances. Thus, a statement in the indorsement "value in account with H" is held to mean the same thing as "value received", and it does not make the indorsement restrictive; (*f*) similarly, is an indorsement "Pay contents to B," being part of the consideration in a deed of assignment, not a restrictive one (*g*).

Who may negotiate?

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been res-

(*a*) *Ponnaya* v. *Palaniappa*, 7 M. L. T. 271; see *Dawson* v. *Isle*, (1906) I Ch. 633, 639.

(*b*) *Pasupathy* v. *Raman*, (1915) M. W. N. 227.

(*c*) *Cartwright* v. *Williams*, (1818) 2 Stark. 340.

(*d*) Daniel, sec. 699.

(*e*) *Slingsby* v. *District Bank Ltd.*, (1931) 2 K. B. 588.

(*f*) Cf. *Buckley* v. *Jackson*, (1868) L R. 3 Ex. 135.

(*g*) *Potts* v. *Reed*, (1806) 6 Esp. 57; *Sivaramakrishna* v. *Mohideen*, 33 Mad. 34.

Sec. 51. tricted or excluded as mentioned in section 50, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

ILLUSTRATION.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

NOTES.

Who may negotiate?

The section enumerates the persons who can indorse. These are the maker, the drawer, the payee and the indorsee. The case of a maker or a drawer indorsing, can occur only when the note or bill is drawn to his own order. Though the section does not say whether a drawee can indorse, he can do so when the bill is drawn to the drawee's order.

Any person legally competent to enter into a contract may be the indorser. An infant also can indorse so as to pass the title in the bill or note, though he cannot bind himself by such indorsement. (See section 26). Where the holder is a minor, indorsement may be made by his natural guardian; (*a*) where an indorsement by the natural guardian was made before another appointed in his place by the court furnished security and was accepted, it was held that the indorsement was valid. (*b*) An agent can indorse the bill on behalf of his principal (see notes to section 27). In the cases of trading partnerships, one of the partners can indorse the bill in the name of the firm, though he cannot do so in his own name, (*c*) and this capacity of one partner to bind the others would seem to continue even after dissolution, if the indorsing was for the purpose of winding up the partnership. (*d*) But in a non-trading partnership, a

(*a*) See *Suppai* v. *Kandasami*, 19 L. W. 560.
(*b*) *Subba* v. *Rama*, 40 Mad. 775.
(*c*) See notes to sec. 27, page 128 *et seq*; *P. R. M. P. R. Chettyar* v. *Muniyandi*, 10 Rang. 257.
(*d*) Ind. Contract Act, sec. 263.

Sec. 51.

partner has *prima facie* no authority to render his co-partners liable by signing bills in the partnership name. But even in such a case, a partner may transfer the property in the bill by negotiating it in the firm-name. (*a*) On the death of one of the members of the firm, the survivor may indorse in his own name, (*b*) though this rule does not hold good in the case of a dissolution of partnership otherwise than by the death of a partner. The survivor in the latter case cannot indorse the bill even in the name of the firm. (*c*) If the dissolution was not known to the indorsee, such indorsement may pass good title to him. (*d*) After bankruptcy of the payee, he cannot indorse, and the Official Assignee can indorse in his own name. After the death of the payee, the legal representative may indorse. (See notes to section 57).

Joint-makers, etc.

In the case of joint makers, payees, or indorsers, the indorsement to be effective should be made by all of them. If there be two joint-payees, one of them cannot indorse in favour of the other, and such indorsement, if made, cannot operate as such under the Law Merchant. The person who gets such indorsement in his favour, cannot sue either as an indorser or as one of the joint-payees. If both of them join in indorsing in favour of one of them, then the indorsement is good, and according to Justice Bhashyam Iyengar, he may sign the indorsement in his favour either at the time of indorsement or even prior to the institution of the suit. Though the person in whose favour such indorsement is made cannot sue upon that indorsement, he can, however, sue as assignee of a chose-in-action, and the transaction may be viewed as a release of his rights by the one in favour of the other. (*e*) It is not necessary in the case of joint-indorsees that all of them should indorse at the same time; where one of three indorsees for collection signed in blank and handed it over to the other two, who later on indorsed in blank and delivered the note to the payee, it was held that there was a good indorsement and that the plaintiff was entitled to sue. (*f*)

One of joint-payees, as agent of others.

In the case of two or more joint-payees, one of them can indorse, only if he has the authority of the other or the others, or is a partner with them. (*g*) The right of a partner to act as the agent of the others in transferring negotiable instruments, has been fully dealt with under section 27. But such authority will not be presumed in the absence of proof.

(*a*) Chalmers (10th Edn.), 81, 82.
(*b*) Daniel, sec. 683.
(*c*) See *Thomason* v. *Frere*, (1808) 10 East. 418.
(*d*) *King* v. *Smith*, (1829) 4 C. & P. 108; *Lewis* v. *Reilly*, (1841) 1 Q. B. 349.
(*e*) *Muhammad Khumarali* v. *Ranga*, 24 Mad. 654, 656.
(*f*) *Annamalai* v. *Muthia*, (1922) M. W. N. 203.
(*g*) *Carvick* v. *Vickery*, (1783) 2 Doug. 653, n.

Sec. 51.

If one of the joint-payees indorses in favour of a stranger, what rights does the stranger get? It is clear that the indorsement is not a valid one under the Law Merchant, and so he cannot sue upon the bill or note as a holder. It is submitted, however, that he may be treated as the assignee of the interest of the indorser in a chose-in-action, and may be allowed to sue the other parties as such. (*a*)

Where in a bill or note, the payee or indorsee is wrongly designated or his name is mis-spelt, he may indorse the bill as therein mentioned, adding if he thinks fit, his proper signature. (*b*) If a person trades under an assumed name, it seems that an indorsement by him in his individual name of a bill drawn in the firm-name is irregular, though not invalid. (*c*)

Explanation.

The necessity for the 'explanation' to the section is not clear. A maker of a promissory note, or a drawer of a bill of exchange cannot indorse the instrument, unless it is made or drawn payable to his order, or he, in the course of negotiation, becomes the holder of the instrument. In like manner, no indorsement by one can be made, unless he is the holder of the instrument, *i. e.*, he must be a person who has not only a right to the possession of the instrument in his own name, but is also entitled to receive and recover the amount due thereon. A person who steals a negotiable instrument, or a finder of a lost instrument cannot indorse, as he is not a holder within the meaning of section 8 of the Act. But this section does not say what the effect will be, if such a person indorses or negotiates away such an instrument. As to that, see section 58 *post*. Now, as regards the payee, the explanation requires that he should be a holder of the instrument before he can indorse and negotiate. The payee is not specifically mentioned in section 8 defining the term 'holder,' though the words of the definition will include him also. In the English Act, the holder is in terms made to include the payee.

This right of negotiation may, however, be restricted or even excluded, as to which see section 52.

Indorsement by a stranger.

The section excludes all persons other than those mentioned in the section from the list of persons who can indorse. If, however, an indorsement is made by a person, not one of those mentioned in the section, he cannot be said to be an indorser, and so does not

---

(*a*) Cf. *Muthar* v. *Kadir*, 28 Mad. 544.

(*b*) B. of Ex. Act, sec. 32 (4).

(*c*) See *Walker* v. *Macdonald*, (1848) 2 Ex. 527; Chalmers (10th Edn.) 132.

incur the liabilities of such a person. (*a*) Perhaps, such a person may be held liable as a guarantor, at least to the person who is in immediate relationship with him. (*b*) In England. a distinction is made between a promissory note and a bill of exchange. In the case of a note, it is held that a stranger signing his name on the back of the note is not liable as an indorser. (*c*) But in the case of a bill of exchange, a stranger signing the instrument has been said to be liable to the subsequent indorsees, as if he were an indorser. (*d*) There was some uncertainty as to whether such a person is liable to the drawer who signed before him, that is, before the drawer entitled to fill up the bill has signed his name as drawer or indorsed the instrument drawn payable to himself. It was said that an instrument drawn to drawer's order and not indorsed, is one to which the provisions of section 20 of the Bills of Exchange Act do not apply, as without the indorsement of the drawer, the bill cannot be said to have been issued. (*e*) But this view has been rejected by the decision of the House of Lords in *McDonald & Co.*, v. *Nash & Co.*, (*f*) where it was held that to such a bill, section 20 of the Act applied and that the drawer had authority to fill in his name as payee over the name of the indorser guaranteeing the instrument. On the facts, it was also held that the guarantor must be taken to make himself liable to the parties on the bill. The decision of the same House in *Steele* v. *M'Kinlay* (*g*) was distinguished on the ground that in that case, "there was no explanation given as to with what purpose or in what manner M'Kinlay's name found itself on the back of the bill." It may be taken therefore as settled that the intention of the parties that the indorsement was to be a security to the drawer may be proved by an agreement written or oral, and that the drawer can successfully sue the indorser on the bill whether the indorser's signature is placed above (*h*) or below that of the indorser. (*i*) It seems that in any case, such an indorser will be liable to a holder who took it on the strength of his signature on the instrument. (*j*)

(*a*) *Thakursey* v. *Kishendas*, 76 I. C. 282 (Sind).

(*b*) *Cf.* Daniel, sec. 713 (c).

(*c*) *Gwinnell* v. *Herbert*, (1836) 5 A & E. 436; 2 Hals. 654 note (l).

(*d*) *Cf.* B. of Ex. Act, sec. 56; see notes on sec. 15, *ante*, page. 86.

(*e*) *Jenkins & Sons* v. *Coomber*, (1898) 2 Q. B. 168; *Shaw & Co.* v. *Holland*, (1913) 2 K. B. 15.

(*f*) (1924) A. C. 625.

(*g*) (1880) 5 A. C. 754.

(*h*) *McDonald & Co.* v. *Nash & Co.*, (1924) A. C. 625.

(*i*) *National Sales Corporation* v. *Bernardi*, (1931) 2 K. B. 188; *Glenie* v. *Bruce Smith*, (1908) 1 K. B. 263; In re *Gooch, Judd* Ex parte (1921) 2 K.B. 593; 2 Hals. 675.

(*j*) *Steele* v. *M'Kinlay*, (1880) 5 A. C. 754, 777.

Sec. 52.

Indorser who excludes his own liability or makes it conditional.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

ILLUSTRATIONS.

(a) The indorser of a negotiable instrument signs his name adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only re-instated in his former rights, but has the rights of an indorsee against B and C.

NOTES.

Conditional indorsement.

Ordinarily, an indorser, by his indorsement binds himself to pay upon no other conditions than that of the dishonour of the instrument, and of due notice of such dishonour to him. It is, however, open to such an indorser to annex some condition to his own liability on the indorsement. Thus, under this section an indorser can by express words in the indorsement, (1) exclude his own liability, or (2) make his liability depend upon the happening of a contingent event, or (3) make the right of the indorsee to receive the amount, depend upon any contingent event. In the first case, the indorser does not incur any liability at all. In the second case, his liability arises or is extinguished, as the case may be, upon the happening of the event specified, but the indorsee can sue the prior parties even before the happening of the event. In the third case, the indorsee's right to recover the amount from the prior parties, is dependent on the event.

An indorser stands in a better position than a maker or an acceptor, because he can exclude his own liability on the contract of indorsement, while the maker cannot do so, and the acceptor can at best make his acceptance only conditional. Under the English law, the drawer of a bill can draw negativing or limiting his own liability to the holder; but under the Indian law the point is left in some doubt. The omission of the words "in the absence of a contract to the contrary," in section 30 *ante*, is significant. Under both systems of law, the maker or drawer cannot make the payment of the money due under the instrument conditional upon the happening of an uncertain event.

Condition precedent or subsequent.

The condition thus imposed by the indorser in his indorsement may be a condition-precedent, or a condition-subsequent. If the condition be precedent, until it is fulfilled, no right to recover the amount passes to the indorsee; and if it be a condition-subsequent, when it is fulfilled, his right is defeated. And in such cases, each subsequent indorser takes the instrument subject to the same stipulations. Thus, for example, if the indorsement was "to pay A or order if a certain ship arrives within a year," then, the right to receive payment is absolute and irrevocable if the ship so arrives. Or, if a note be indorsed "pay to A or order if he arrives at twenty-one years of age, or if he is living when it becomes due," it is an indorsement upon a condition-precedent. If the event becomes impossible of performance, or the conditions specified are not fulfilled, the indorsee gets no title to the bill, and cannot sue the indorser or any prior party thereto. On the other hand, if the bill is indorsed "pay to A.B. or order, unless before payment I give you notice to the contrary," it is an indorsement upon a condition subsequent, and the title of the indorsee will be defeated, if, before payment, a notice not to pay is given to the maker of the note.

Acceptor, etc., to take notice of condition.

The acceptor or maker is bound, in cases of conditional indorsements, to take notice of the condition annexed to the indorsement, for if a person accepts a bill after a conditional indorsement, he is bound by that condition, and cannot pay unless the condition is fulfilled. So, where a bill indorsed payable to the transferee on a certain condition, was afterwards accepted, passed through several hands, and was finally paid by the acceptor before the condition was satisfied, it was held that the acceptor was liable to pay the bill again to the payee. (*a*) Of course, this is hard on the acceptor; for, if he dishonoured the

(*a*) *Robertson* v. *Kensington*, (1811) 4 Taunt, 30.

Sec. 52.

bill, he might be liable in damages for such dishonour, and yet it might be impossible for him to find out if the condition was satisfied. His position has been, however, rendered safe in England by the express enactment of section 33 of the Bills of Exchange Act, whereby the payer may disregard any condition introduced in the indorsement, and a payment by him to the indorsee is rendered valid, whether the condition was fulfilled or not. Now, under the English law, such a condition would be operative only between an indorser and his indorsee. The Indian Act by this section still preserves the Common-Law rule in England before the Bills of Exchange Act. (*a*)

Effect of condition in indorsement.

A condition in an indorsement has a very different operation on the character of the bill, from a condition inserted in the original formation of the bill. In the latter case, the negotiability of the instrument is destroyed, or, is in some cases, delayed; but the condition attached to an indorsement in no way affects the negotiability of the paper.

Conditional and restrictive indorsements.

A payee of a bill or note may also make a qualified indorsement, so as to transfer the interest in the bill to the indorsee and enable him to sue thereon without rendering himself liable thereon. Such a qualified indorsement differs from a restrictive indorsement in that, whereas the latter restrains the negotiability of the instrument to a particular person or purpose, the former in no respect affects the negotiability but only qualifies the duties, obligations and responsibilities of the indorser which would otherwise bind him. The mode of making an indorsement qualified is shown by illustration (a) of the section. An indorsement of a bill or note to A "without recourse," "*sans recourse*" or "at his own risk", passes the interest of the indorser to A, the indorsee, but negatives or limits his own liability as an indorser on the non-acceptance or the non-payment thereof. (*b*) Such an indorsement does not, however, absolve him from certain liabilities, that is, those of a transferor by delivery which have been already enumerated; (*c*) for, the indorsee, in such cases takes the bill only on the credit of the transferor, though it may be that the indorser by his qualified indorsement is unwilling to make himself responsible for the payment. Such an indorsement does not indicate that the parties are conscious of any defect in the security. (*d*)

Indorsement 'sans recourse'.

The second clause of the section provides an exception to the general rule that a holder may sue all prior parties to a bill or note,

(*a*) Chalmers (10th Edn.) 134.

(*b*) *Goupy* v. *Harden*, (1816) 7 Taunt, 159, 163; *Castrique* v. *Buttigieg*, (1856) 10 Moo. P. C. C. 94, 110, 112 & 117.

(*c*) See notes to sec. 46, *ante* p. 228.

(*d*) Daniel, sec. 670.

but not any subsequent party. (*a*) This ordinary rule does not, however, apply when a holder had previously indorsed, and the subsequent indorser has no right of action or remedy on the previous indorsement against the holder; for, in such cases, the holder himself not being liable on the previous indorsement, there can arise no circuity of actions; and a holder of a bill may always show such circumstances as do away with any liability by reason of his previous indorsement, as for instance, where such party originally agreed to indorse the paper as a surety to the indorsee. (*b*)

Indorser enlarging liability.

Not only may the indorser qualify or restrict his own liability, he may also, if he chooses, enlarge his ordinary responsibility as indorser by waiving some of the holder's duties, as for instance, presentment, notice of dishonour, etc. (*c*) Such a stipulation in the indorsement relates only to the liability of the indorser, and does not affect the negotiability of the paper. This is often done in cases where the payment of the bill is doubtful, the object in such cases, being to avoid the expense and inconvenience resulting from a return of the bill, should it be dishonoured.

Holder deriving title from holder in due course.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

NOTES

Section qualified.

The rule laid down in the section is subject to a qualification. That qualification is expressly enacted in the Bills of Exchange Act; (*d*) and though the Indian Act is silent on the point, the Courts in India would hold the qualification applicable to cases arising in India also. If the holder who derives his title from a holder in due course is himself a party to the fraud or illegality affecting the instrument, he cannot claim the rights thereon of a holder in due course. Courts will not help a party to reap the advantage of his own fraud. (*e*)

As a general rule, the purchaser of a negotiable instrument can never be placed in a worse position than his transferor, although

(*a*) *Bishop* v. *Hayward*, (1791) 4 T. R. 470; see *Britten* v. *Webb*, (1824) 2 B. & C. 483.

(*b*) *Wilders* v. *Stevens*, (1846) 15 M. & W. 208; *Wilkinson* v. *Unwin*, (1881) 7 Q. B. D. 636, 637; see also *Glenie* v. *Bruce Smith*, (1907) 2 K. B. 507, on appeal (1908) 1 K. B. 263; *Gooch*, In re, (1921) 2 K. B. 593.

(*c*) *Cf.* B. of Ex. Act. sec. 16 (2).

(*d*) B of Ex. Act, sec. 29 (3); *Robinson* v. *Reynolds*, (1841) 2 Q. B. 196.

(*e*) See Daniel, sec. 803.

Sec. 54.

he himself could not in the first instance have acquired the advantageous position of his transferor. Thus, a partner in a firm, fraudulently indorses a firm-bill to D, in payment of a private debt. F is cognizant of the fraud, but is not a party to it. D indorses the bill to E who takes it for value and without notice. E indorses it to F. F. acquires his rights. If he gave value to E, he can sue all the parties to the bill; if he did not, he can sue all parties except E. (*a*) As soon as the paper comes into the hands of a holder unaffected by any defect, its character as a negotiable instrument is established, and acquires the same immunity in the hands of his transferees which attached it in his own hands. (*b*) This protection does not apply however, to a holder with notice through an agent, though he had no personal knowledge of its defects.

Instrument indorsed in blank.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

NOTES.

Blank indorsement.

As to crossed cheques, see Chapter XIV of the Act. Referring to notes indorsed in blank, Lord Mansfield said: "I see no difference between a note indorsed in blank and one payable to bearer. They both go by delivery, and possession proves property in both cases." (*c*) If a bill is payable to John Smith, and he signs on the back "John Smith," this act is interpreted by the Law Merchant to be as if he had written "(1) I hereby assign the bill to the bearer, and (2) I hereby undertake that if this bill be dishonoured, I, on receiving due notice thereof, will indemnify the bearer." (*d*) But if a bill payable to F.S.H. and others or bearer was crossed "account payee," it is not a bill payable to bearer but only to the payees mentioned. (*e*) If a bill is indorsed in blank, any number of persons may join in suing upon it

---

(*a*) *May* v. *Chapman*, (1847) 16 M. & W. 355; *Masters* v. *Ibberson*, (1849) 8 C. B. 100; Chalmers (10th Edn.) 112.

(*b*) *Subrao* v. *Sitaram*, 2 Bom. L. R. 891; *Ardeshir* v. *Kushaldas*, 32 Bom. 247; *Vindamuni* v. *Kamaka*, 5 M. L. T. 300; *Guildford Trust* v. *Goss*, (1927) 43 T. L. R. 167; but *Kredit Bank* v. *Schenkers*, (1927) 1 K. B. 826, where a branch manager drew bills fraudulently of the company.

(*c*) *Peacock* v. *Rhodes*, (1781) 2 Doug. 633, 636; *Jethaparkha* v. *Ramachandra Vithoba*, 16 Bom. 689, 695.

(*d*) B. of Ex. Act, sec. 34 (1); Chalmers (10th Edn.) 134.

(*e*) *House Property Co.* v. *London County Westminster Bank*, (1915) W. N. 247; see *Sutters* v. *Briggs*, (1922) 1 A. C. 1.

without proof of a partnership or joint-interest." (*a*) As to the effect of an indorsement in blank followed by an indorsement in full, see the next section.

Sec. 55.

Conversion of indorsement in blank into indorsement in full.

55. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

NOTES.

Indorsement in full after a blank one.

The section reproduces the English law on the subject as it was before the Bills of Exchange Act was enacted. (*b*) What the section means to say is that if a bill is indorsed in blank, or is payable to bearer (*c*) and is afterwards indorsed by another in full, the bill remains transferable by delivery with regard to all parties prior to such indorser in full; but such indorser in full cannot be sued by any one except the person in whose favour the indorsement in full is made, or any one deriving title through an indorsement in his hand. The rule may be illustrated thus: C the payee of a bill indorses it in blank and delivers it to D, who specially indorses it to E or order. E without indorsement transfers the bill to F. Then F, as the bearer, is entitled to receive payment or to sue the drawer, the acceptor, or C, who indorsed it in blank, but he cannot sue D or E. (*d*) Now, under the English law, such a bill whose last indorsement is not an indorsement in blank is not payable to bearer; but the Amercian law is the same as the Indian law. (*e*) The section was proposed to be amended so as to bring the Indian law in conformity with the English law. (*f*)

The marginal note of the section is wrong. It ought to be "indorsement in blank followed by indorsement in full."

(*a*) *Ord* v. *Portal*, (1812) 3 Camp. 239; *Attwood* v. *Rattenbury*, (1822) 6 Moore. C. P. 579; *Nanak Chand* v. *Bryan Erskine*, 19 P. L. R. 1906; *Ramanadhan* v. *Gundu*, (1928) M. W. N. 680.

(*b*) B. of Ex. Act, secs. 8 (3) and 34 (4).

(*c*) *Forbes, Forbes Campbell & Co.* v. *Official Assignee*, 27 Bom. L. R. 34.

(*d*) *Smith* v. *Clarke*, (1794) 1 Peake. 295: *Walker* v. *Macdonald*, (1848) 2 Ex. 527.

(*e*) B of Ex. Act, sec. 8 (3); Daniel, sec. 696,

(*f*) Bill No. 16 of 1929 of the Government of India.

Sec. 56.

Indorsement for part of sum due.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

NOTES.

Partial indorsement.

A bill or note cannot be indorsed for part of the amount due on a negotiable instrument, *i.e.*, the indorsement cannot be made in terms for less than the sum appearing to be due upon the bill or note transferred, because a personal contract cannot be apportioned. (*a*) "Such an indorsement is not warranted by the custom of merchants and would be attended with this inconvenience to the prior parties, that it would subject them to a plurality of actions." (*b*) No authority can be found to show that there may be a partial indorsement of a bill of exchange, and it certainly cannot be indorsed so as to allow an action by the indorsee for part of the amount and by the indorser as to the residue. Daniel bases the prohibition contained in the section on the ground that the law will not permit one cause of action to be cut into several, and such an indorsement is utterly void as an indorsement. (*c*) The effect of such an indorsement is to confer on such indorsee a lien on the bill to the extent of the sum expressed in the indorsement, but not to transfer a right of action except in the indorser's name, and Chalmers thinks that such indorsement purporting to split the right of action on the instrument is invalid as a negotiation, though it may operate as an authority to receive payment of the amount therein specified. (*d*)

The words "purports to transfer" are significant in the section, because, if the limitation of the transfer does not appear on the face of the instrument, then the transferee is entitled to sue the maker or acceptor for the whole amount of the bill, and he becomes a trustee for the transferor in respect of the surplus. (*e*)

(*a*) *Hawkins* v. *Cardy*, (1698) 1 Ld. Raym 360. Cf. *Heilbut* v. *Nevill*, (1869) L. R. 4 C. P. 354, 358 affirmed in (1870) L. R. 5 C. P. 478; B. of Ex. Act, sec. 32 (2).

(*b*) Byles (19th Edn.) 157.

(*c*) Daniel, sec. 668.

(*d*) Chalmers (10th Edn.) 131; 2 Halsbury (2nd Edn.) p 656.

(*e*) See *Reid* v. *Furnival*, (1833) 1 Cr. & M. 538; *Cook* v. *Lister*, (1863) 32 L. J. C. P. 121, 127.

Sec. 56

Indorsement for part, and then for the balance.

In America, it has been held that an indorsement for a part of the sum at first, followed by an indorsement of the residue afterwards in favour of the same indorsee is not a valid indorsement. (*a*) Again, a bill or note payable by instalments cannot be indorsed for one or more of the instalments for which it is made. (*b*) A bill or note cannot be indorsed to two or more indorsees severally thus: "Pay £ 50 to D or order and £ 50 to E or order" with reference to a bill or note for £ 100 (*c*). On the same principle, it has been held that if a partner jointly interested in the amount of a bill of exchange indorses it over in payment of a private debt, in fraud of the partnership, not even his interest therein passes by the indorsement, as such a form of indorsement is unknown to the law. (*d*) However, in America it has been held that if distinct shares in the amount on the bill are transferred to two or more indorsees by the payee, they may maintain a joint action against the maker, and one of them can maintain an action of trover against the other or others for conversion. (*e*) Though a partial indorsement purporting to split the right of action is invalid as a negotiation, it may operate as an authority to receive payment of the amount thereby specified. (*f*)

The last clause of the section is founded on an English case (*g*) decided in 1698. If the amount of the bill has been paid in part, it may be indorsed as to the residue. (*h*) The section requires, however, that such part-payment should be indorsed on the instrument, and then only can it be negotiated for the balance.

Where the holder of a promissory note after receiving some money which was not indorsed on the note, fraudulently negotiated it for full value, it was held, that the indorsee could recover the full value as the person paying enabled the fraud to be committed by not insisting on the payments being indorsed. (*i*)

The same will be the case if the amount of the bill is paid in full, but the instrument is allowed to be in the hands of the holder, who fraudulently indorses the same taking advantage of the fact that no discharge is noted on the instrument. (*j*)

(*a*) Chitty (11th Edn.) 177 note (m); Daniel, sec. 668.

(*b*) Byles (19th Edn.) 157 note (t).

(*c*) B. of Ex. Act, sec. 32 (2); *Heilbut* v. *Nevill*, (1869) L. R. 4. C. P. 354, 358.

(*d*) *Heilbut* v. *Nevill*, (1869) L. R. 4 C. P. 354, 358 affirmed in (1870) L. R. 5 C. P. 478, 482.

(*e*) Daniel, sec. 668.

(*f*) *Heilbut* v. *Nevill*, (1869) L. R. 4 C. P. 354, 358.

(*g*) *Hawkins* v. *Cardy*, (1698) 1 Ld. Raym. 360.

(*h*) *Jaichand* v. *Sardar Singh*, 44 I. C. 264.

(*i*) *Vithal Das* v. *Indravellu*, 29 I. C. 936.

(*j*) *Glasscock* v. *Balls*, (1889) 24 Q. B. D. 13 (C. A.); *Nash* v. *De Freville*, (1900) 2 Q. B. 72.

Sec. 58.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

NOTES.

Leg. repve., how to negotiate?

As to who is a legal representative, see notes to section 29. The section says clearly that the legal representative cannot complete the indorsement of the deceased by delivering the instrument. To transfer the instrument, the legal representative must write a fresh indorsement on the instrument and then deliver it. (*a*) As to how he should indorse in order to exclude his own personal liability, see notes to section 29.

The rule laid down in the section as to the want of capacity in the legal representative to complete the indorsement of the deceased by delivery is based on more than one ground. It may be on the ground that the legal representative is not the agent of the deceased. The better ground seems to be that the mere writing by the deceased in his life-time, of his name upon the bill without delivery is nugatory; and the estate including the bill having vested in the legal representative, it requires a fresh act of his to transfer the bill. If the paper had been already delivered by the deceased, a suit may lie at the instance of the transferee to compel the legal representative to indorse it. Even where an instrument is specially bequeathed to a legatee, the latter must obtain the indorsement of the testator's legal representative before attempting either to negotiate or to enforce it. (*b*)

Instrument obtained by unlawful means or for unlawful consideration.

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor

(*a*) *Bromage* v. *Lloyd*, (1847) 1 Ex. 32.

(*b*) *Bishop* v. *Curtis*, (1852) 18 Q. B. 878; see *Swinburne* In re, *Sutton* v. *Featherley*, (1926) 1 Ch. 38.

or holder, or from any party, prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course. **Sec. 58.**

NOTES.

Instruments lost.

If the holder of a bill or note loses it, the finder acquires no title to it, so that the owner upon identifying it and tracing it to his possession may maintain an action for the instrument against him. The finder cannot sue the acceptor or the maker or any prior party to the instrument, and even if he has received the money from such parties, the owner may maintain an action against him as if the money had been received for his use.

Although the finder of a negotiable instrument has no title against the true owner, if the bill lost be one which may pass by delivery, a third party acquiring it from the finder *bona fide*, for valuable consideration, and before maturity, is entitled both to retain the instrument against the real owner and to compel payment from the prior parties thereon. "This is on the principle that whenever one of two innocent persons is to suffer by the act of a third party, he who enabled such third person to bring about the loss must sustain it." (*a*) But if the lost instrument was one not transferable without an indorsement, the position is this : the finder has himself no title to the instrument, nor can he convey one even to a *bona fide* transferee, for, he can do so only by an indorsement ; and an indorsement by him under the circumstances, would be clearly a forgery, and forgery can in no case convey title.

Stolen bill, etc.

Although an instrument be itself good, the defendant, in an action on it, may impeach the character of the transaction on which the instrument was founded, or the means by which possession of the bill or note was obtained ; that is, he may prove that it originated in an illegal transaction, or that the consideration was unlawful, or that its possession was obtained by means of an offence or fraud. If a man steals a bill or note, or obtains a cheque by fraud, of course he does not acquire any title to the instrument, and the proceeds of the instrument may be followed in the hands of the person or a volunteer from him ; (*b*) yet if the bill is one negotiable by delivery, a transferee for

(*a*) Daniel, sec. 1469.
(*b*) *Banque Belge* v. *Hambrouck*, (1921) 1 K. B. 321 ; *Robarts* v. *Tucker*, (1851) 16 Q. B. 560.

Sec. 58.

value without notice, from him will acquire a good title not only against the thief, but also against any party prior to him. (*a*) The transferee in such cases who claims to be a *bona fide* holder for value must prove it to be so. (*b*) So, if a person perfects an instrument and leaves it in his desk, it is at his own risk; and if it is stolen from the desk and passed to a *bona fide* holder for value, such holder will be entitled to recover, and the fact that it was not delivered as a valid security can be no defence. (*c*) The case however would be otherwise if the instrument lost or stolen was incomplete and undelivered. In such cases, there is nothing in the conduct of the person to estop him from showing that the instrument was taken possession of by means of a crime. Therefore if the blank be filled up, it will be sheer forgery and the person is not bound even to a *bona fide* holder for value. (*d*) But if the party sought to be charged had entrusted a blank paper with his signature to an agent or other person to fill up the blanks in some form or for some purpose, then he would be bound to a *bona fide* holder for value, if the agent wrote out a bill or note and negotiated it, (*e*) even though it be contrary to his instructions, or in breach of the purpose for which it was given. (*f*) For, in such cases, "the party has created an agency or trust by means of which the fraud is committed," and an innocent third party who is the victim of the fraud, must be protected. (*g*) But where the plaintiff was induced to draw a cheque in favour of a customer by his clerk, who forged them by slightly changing the initials and making it payable to a fictitious person and then took it to the defendant's manager who paid cash for the same, and the defendant passed the cheque to his bankers who collected the amount for him, it was held that the plaintiff was entitled to recover the amount from the defendant, as the latter could not be said to have acquired title by the forgeries of the clerk. (*h*)

Imposing on persons.

Next as to instruments procured by imposing on infirm or illiterate persons. The leading case on the point is the case of *Foster* v. *Mackinnon*, (*i*) where Byles, J. said:—"It seems plain on principle and on

(*a*) *Raphael* v. *Bank of England*, (1855) 17 C. B. 161; *The London Joint Stock Bank* v. *Simmons*, (1892) A. C. 201; *De la Chaumette* v. *Bank of England*, (1831) 2 B. & Ad. 385. See *Chichester* v. *Hill & Son*, (1882) 52 L. J. Q. B. 160; *Moss* v. *Hancock*, (1899) 2 Q. B. 111, 118 (decided under section 100 of the English Larceny Act of 1861); *The Bank of Bengal* v. *Mendes*, 5 Cal. 654.

(*b*) Sec. 118 (g), *post*.

(*c*) Daniel, secs. 839, 840.

(*d*) *Baxendale* v. *Bennett*, (1878) 3 Q. B. D. 525; *Arnold* v. *Cheque Bank*, (1876) 1 C. P. D. 578. See notes to secs. 85 & 87 *post*.

(*e*) Cf. *Young* v. *Grote*, (1827) 4 Bing. 253; *Ingham* v. *Primrose*, (1859) 7 C. B. N. S. 82; *Bank of Ireland* v. *Evan's Trustees*, (1855) 5 H. L. C. 389; see also *Smith* v. *Prosser*, (1907) 2 K. B. 735; *London Joint Stock Bank* v. *Macmillan and Arthur*, (1918) A. C. 777.

(*f*) *Bank of Bengal* v. *Fagan*, (1849) 7 Moo, P.C.C. 61, 71.

(*g*) Cf. *Garrard* v. *Lewis*, (1882) 10 Q. B. D. 30.

(*h*) *Goldman* v. *Cox*, (1924) 40 T.L.R. 744 (C. A.).

(*i*) (1869) L. R. 4 C. P. 704.

authority that if a blind man or a man who cannot read or a man who for some reason forbears to read, has a written contract falsely read over to him, the reader mis-reading to such a degree that the written contract is of a nature altogether different from the contract pretended to be read from the paper which the blind or illiterate man afterwards signs, then at least if there be no negligence, the signature so obtained is of no force, and it is invalid not merely on the ground of fraud, where fraud existed, but on the ground that the mind of the signor did not accompany the signature. In other words, he never intended to sign, and therefore, in contemplation of law, never did sign the contract to which his name is appended." (*a*) In that case, an old man with enfeebled sight was induced to sign his name on the back of a bill of exchange by being told that it was a Railway guarantee to which his signature was wanted. Then the perpetrator of the fraud negotiated the bill which eventually got into the hands of a holder in due course, who sued the old man as an indorser. It was held that he was not liable on his indorsement, for "it was not his design, and, if he were guilty of no negligence, it was not even his fault that the instrument he signed turned out to be a bill of exchange. It was as if he had written his name on a sheet of paper for the purpose of franking a letter or in a lady's album or on an order for admission to the Temple Church, . . . and there had already been without his knowledge a bill of exchange or a promissory note payable to order inscribed on the other side of the paper. To make the case clearer, suppose the bill or note on the other side of the paper in each of these cases to be written at a time subsequent to the signature, then the fraudulent mis-application of that genuine signature to a different purpose, would have been a counterfeit alteration of a writing with intent to defraud and would therefore have amounted to a forgery. In that case, the signor would not have been bound by his signature for two reasons; first, that he never in fact signed the writing declared on, and secondly, that he never intended to sign any such contract." (*b*) It is to be noticed that the learned Judge insists upon the absence of negligence on the part of the signor as a condition of his exemption from liability. (*c*) So, if the person signing has full and free means of ascertaining the true character of the instrument and neglects to avail himself of such means, for example, if a man knowing how to read does not care to read a paper put before him for signature, he cannot

(*a*) See also *Oriental Bank Corporation* v. *John Fleming*, 3 Bom. 242; *Banku Behari* v. *Krishto Gobindo*, 30 Cal. 433, 438.

(*b*) *Foster* v. *Mackinnon*, (1869) L. R. 4 C. P. 704, 712, 713.

(*c*) *Narayanaswami* v. *Rajaballi*, L. B. R. (1893-1900) 412.

Sec. 58.

be heard to say that he intended to sign a paper other than the bill or note he signed, where it has passed to a holder in due course. (*a*) Even if there was misrepresentation, but if it related only to the contents or effect of the contract, the executant will not be relieved. (*b*) If, however, there was negligence on the part of the signor, he will be estopped ; this estoppel, it is said, is restricted only to negotiable instruments and not to other cases, where the defendant is under no duty to the plaintiff. (*c*) If a person executes a document knowing its contents but mis-appreciating its legal effect, he cannot deny his execution of the instrument. (*d*) In the case of a Pardaneshin woman, the plaintiff must establish by satisfactory evidence that the note was explained to the defendant and understood by her. (*e*)

Bills, etc., under coercion.

It is of the essence of contracts including bills of exchange and notes, that the consent to the contract must be free, so that if a bill or note was executed under coercion, proof of such coercion enables the party executing the instrument to avoid it at his option. Where therefore, in an action on a bill of exchange against the captain of a ship, it was proved that he had been thrown into prison and threatened that he would be guillotined, and his ship confiscated unless he put his name to a bill as drawer, the plaintiff as indorsee was nonsuited in the absence of any evidence that he was a holder in due course. (*f*) Similarly, where in an action on a joint promissory note by a husband and his wife, the wife proved that she was induced by duress to sign the note, she was exonerated, and it was further held, that the onus was on the plaintiff to prove that he was a holder in due course, and since there was no evidence on his side to negative knowledge of duress, his action failed. (*g*) Under the Indian law, an unlawful detaining or threatening to detain any property to the prejudice of any party whatever, constitutes coercion. To constitute coercion, it is immaterial that the threats were not directly made towards the person executing the note or the bill.

Bills obtained by fraud.

Fraud, if established, is a good defence to an action on a negotiable instrument. So, if the maker or the acceptor who is primarily liable for payment proves that the consideration for the instrument

---

(*a*) *Cf.* Daniel, secs. 850 to 852.

(*b*) *Howatson* v. *Webb*, (1908) 1 Ch. 1.

(*c*) *Carlisle & Cumberland Banking Co.* v. *Bragg*, (1911) 1 K. B. 489.

(*d*) *Dagdu* v. *Bhana*, 28 Bom. 420, 428.

(*e*) *Sudisht* v. *Sheobart Koer*, 7 Cal. 245 ; *Shoprasan* v. *Munshi Narasingh*, 62 M. L. J. 649 (P. C.) (Case of a mortgage).

(*f*) *Duncan* v. *Scott*, (1807) 1 Camp. 100 ; Ind. Contract Act, sec. 15.

(*g*) *Talbot* v. *Von Boris* (1911) 1 K. B. 854.

Sec. 58.

was vitiated by fraud, then the person defrauding is not entitled to recover, for " the law so abhors fraud that it will not allow technical difficulties of any kind to interfere to prevent the success of justice and truth." A bill is affected with fraud, when the issue or any subsequent negotiation of it is obtained by fraud, or in breach of faith. In such cases, the holder of the bill subsequent to the fraud cannot enforce payment against any party thereto, nor can he retain the bill against the true owner. (*a*) When a cheque was given for the price of a horse warranted to be sound but really unsound to the knowledge of the seller, it was held there was no contract, and no action lay on the cheque. (*b*) On the same principle, where the defendant accepted the bill in question to get rid of a distress on his goods by the plaintiff for rent represented to be due, it was held, on its appearing that the plaintiff fraudulently represented to the defendant that the rent was due when it was not, that he could not recover thereon. (*c*) Similarly, when on dissolution of a partnership one partner was induced to execute a pronote in favour of the other partners on the faith of accounts fraudulently prepared, it was held, that the note was based on fraud and so not binding. (*d*) In a Calcutta case, where the defendant obtained advances of money on hundis by making fraudulent representations knowing them to be untrue and knowing that without them he could not have got the money, it was held the plaintiff could rescind the contract and claim immediate repayment of the amount due, even before the due date of the hundis. (*e*) In cases in which a person in fraud of his partners or of the company of which he is the manager draws or indorses bills of exchange, it has been held that fraud as a defence is open to them, (*f*) except as against holders in due course. (*g*) In all these cases, where fraud is pleaded as a defence, the party must have repudiated the contract and retained no benefit thereunder. (*h*)

As to third parties.

The same would be the result if the bill or note is founded on a consideration fraudulent as to third parties. The most common form

(*a*) *Cf.* Ind. Contract Act, secs. 17 & 19; *Dawes* v. *Harness*, (1875) L. R. 10 C. P. 166.

(*b*) *Lewis* v. *Cosgrave*, (1809) 2 Taunt 2; see also *Archer* v. *Bamford*, (1822) 3 Stark. 175.

(*c*) *Grew* v. *Bevan* (1822) 3 Stark. 134.

(*d*) *Kurindaliammal* v. *Kunhi Kannan*, (1930) Mad. 141.

(*e*) *Baboo Lall* v. *Joy Lall*, 24 Cal. 533.

(*f*) *Heilbutt* v. *Nevill*, (1870) L. R. 5 C. P. 478; *Heath* v. *Sansom*, (1831) 2 B. & Ad. 291.

(*g*) *Guildford Trust* v. *Goss*, (1927) 43 T.L.R. 167; see also *London and Montrose Ship-building & Repairing Co.* v. *Barclays Bank*, 31 Com. Cases. 67, reversed on facts in 31 Com. Cases. 182.

(*h*) *Dawes* v. *Harness*, (1875) L. R. 10 C. P. 166; *Urquhart* v *Macpherson*, (1878) 3 A.C. 831; *Mills* v. *Oddy*, (1835) 2 Cr. M. & R. 103; *Kurindaliammal* v *Kunhi Kannan*, (1930) Mad. 141.

Sec. 58.

of such a transaction is a secret stipulation with a bankrupt in fraud of his creditors. So, a bill or note given to induce a creditor to join in a composition deed, (*a*) or to abandon his petition in insolvency, or to withdraw opposition (*b*) is void, even though the bill or note may be executed not by the insolvent but by a third party. (*c*) Though ante-dating or post-dating of a bill is not an offence; (*d*) if it is done for defrauding creditors, it may amount to forgery. (*e*)

Bills, etc., for illegal considera-tion.

In the next place, a note or a bill given for an illegal consideration is void. The consideration may be illegal, either because it is immoral and contrary to public policy, or because it is specially interdicted or prohibited by Statute. (*f*)

Immoral considera-tion.

A bill or note given in consideration of future illicit cohabitation is void, (*g*) though a promise to make an allowance to a woman in consideration of past cohabitation is not. (*h*) But if the past cohabitation amounted to adultery which is an offence in India, such a promise is not enforceable. (*i*) It has also been held that a promissory note is void, if the person advanced the money for, and with the knowledge of, its being applied for an immoral purpose, for example, to pay a dancing girl for cohabiting with her; (*j*) but it is submitted that this decision goes a little too far, though it may be justified on the ground that the agreement was made *with the immediate object* of the money being used for an immoral purpose. (*k*) It is to be observed that the mere knowledge that the money will be used for an immoral purpose is not enough to render the note void, but the loan should be made under a pre-concerted object between the parties that it should be so applied. (*l*) So, it has been held that where a person lent money and took the money in the name of his concubine's mother, the debtor was not entitled to plead that the consideration was

(*a*) *Cockshott* v. *Bennett*, (1788) 2 T. R. 763; *Mahamad* v. *Parameswara*, 16 M. L. J. 418.

(*b*) *Agar Chand* v. *Viraraghavalu*, 3 M. H. C. R. 172; *Krishnappa* v. *Adimula*, 20 Mad. 84.

(*c*) *Ibid*; *Mahammad* v. *Parameswara*, 16 M. L. J. 418.

(*d*) *Nallaya* v. *Palani*, (1926) M. W. N. 726; *Walter Mitchell* v. *Tennent*, 52 Cal 677; *Royal Bank of Scotland* v. *Tottenham*, (1894) 2 Q. B. 715.

(*e*) Re *Gomersall*, (1875) 1 Ch. D. 137; *Jesse Jones* v. *John Gordon*, (1877) 2. A. C. 616; Chalmers (10th Edn.) p. 40.

(*f*) Ind. Contract Act, sec. 23; 57 M. L. J. (N. R. C.) 16.

(*g*) *Tayaramma* v. *Sitaramaswami*, 23 Mad. 613; *Lakshminarayana* v. *Subhadri Ammal*, 13 M. L. J. 7. See *Thasi Muthukannu* v. *Shunmuga Velu*, 28 Mad. 413.

(*h*) *Dhiraj* v. *Bikramajit*, 3 All. 787; *Namberumal* v. *Veeraperumal*, 59 M. L. J. 596, 602; *Ayerst* v. *Jenkins*, (1873) L. R. 16 Eq. 275. But see, *Husseinali* v. *Dinbai*, 25 Bom. L. R. 252; *Kisondas* v. *Dhondu*, 44 Bom. 542; *Ganapati* v. *Sundararaja*, (1929) M. W. N. 828.

(*i*) *Alice Mary Hill* v. *William Clarke*, 27 All. 266; *Kisondas* v. *Dhondu*, 44 Bom. 542.

(*j*) *Panni Chand* v. *Nanoo Sanker Tawker*, 18 M. L. J. 456.

(*k*) Ind. Contract Act, sec. 23; *Natarajulu* v. *Subramanian*, 45 Mad. 778.

(*l*) 3 American Ruling Case Law, sec. 148.

tainted with immorality; allowing the mother to sue in such a case cannot be treated as involving the enforcement of an immoral contract. (*a*)

Consideration opposed to public policy.

Consideration opposed to public policy is illegal, and contracts founded on them are condemned by law. An agreement to be at variance with public interest, it is said, must be clearly and indubitably in contravention of public policy; and if it be merely doubtful, then the agreement will not be void. (*b*) Stipulations in general restraint of trade, or agreements involving traffic in public offices, (*c*) marriage brokerage contracts, (*d*) or contracts in consideration of persuading a woman to marry the promisor, (*e*) or of giving one's daughter or ward in marriage, (*f*) are all opposed to public policy, and negotiable instruments founded on such considerations are of no validity between the parties. On the same principle, a promissory note given in consideration of the bringing about the adoption of the promisor by the daughter of the promissee is also void. (*g*) Where the consideration for a note was that the defendant should hand over three of his pannayals to work for the plaintiff and that the money was to become payable if they refused to work, it was held that it was illegal, the consideration being against public policy, as it savoured of slavery. (*h*) It is said, that the test whether a contract is contaminated with an illegal consideration, is this: Does the plaintiff require any aid from the illegal transaction to establish his case? (*i*) A promissory note given in respect of the plaintiff's share of profits in a betting transaction, (*j*) or one given for the purpose of carrying on an illegal business, (*k*) is void. Abandonment of prosecution for an offence against the public, of which the law requires prosecution is not a lawful consideration, (*l*) and a promissory note given for the purpose of stifling a criminal prosecution for a non-compoundable offence is not only null and void, but vicious in character. (*m*) Where the con-

(*a*) *Ponnambala* v. *Vasudeva*, 56 I. C. 616.

(*b*) *Richardson* v. *Mellish*, (1824) 2 Bing. 229.

(*c*) *Saminatha* v. *Muthusami*, 30 Mad. 530; *Ledu Coachman* v. *Hiralal*, 43 Cal. 115; *Firm of Attar Singh* v. *Haku*, 24 I. C. 692 (Lah.).

(*d*) *Maung Pyo* v. *Maung Po Gyi*, 50 I. C. 551. (U.B.)

(*e*) *Lowe* v. *Peers*, (1770) 4 Burr. 2225.

(*f*) *Venkatakrishnayya* v. *Lakshmi Narayana*, 32 Mad. 185 (F.B.).

(*g*) *Kothandarama* v. *Thesu*, 27 M.L. J. 416.

(*h*) *Soari* v. *Subbarayar*, 5 L. W. 706; *Ram Sarup* v. *Bansi Mandar*, 42 Cal. 742. Cf. *Ponnusami* v. *Palayathan*, 10 L. W. 202.

(*i*) *Simpson* v. *Bloss*, (1816) 7 Taunt 244; *Wild* v. *Simpson*, (1919) 2 K. B. 544.

(*j*) *Joseph* v. *Solano*, 9 B. L. R 441.

(*k*) *Trikam Damodhar* v. *Lala Amir Chand*, 8 B. H. C. R. (A. C. J.) 131.

(*l*) *Ghulam Mohideen* v. *Deokia Nand*, 22 I. C. 393.

(*m*) *Namasivaya* v. *Kylasa*, 7 M. H. C. R. 200; *Jones* v. *Merionethshire Permanent Benefit Building Society*, (1892) 1 Ch. 173; *Muhamad* v. *Vahduddin*, 92 I.C. 503. Cf. *Srirangachariar* v. *Ramasami*, 4 M.L.J. 106; *Kessowji* v. *Hurjivan*, 11 Bom. 566.

Sec. 58.

sideration is the compounding of a charge of grievous hurt to a person who died before the complaint, it is illegal, and the note is not enforceable. (*a*) If the offence is one, the compounding of which is allowed by law, such compounding is not unlawful. (*b*) Moreover, when a *bona fide* debt exists and where the transaction between the parties involves a civil liability as well as possibly a criminal act, a promissory note given by the debtor and a third party is a valid one. (*c*) A note given to the prosecutor after conviction for his expenses is not illegal. (*d*)

A promissory note executed in favour of a witness for giving evidence in a civil case is void, as the consideration is unlawful as opposed to public policy. (*e*) So also a note in favour of a commissioner appointed by a civil court by a party for fees is invalid, as his work is not for the party but for the court. (*f*) On a promissory note executed by a client to his attorney for an amount beyond his just and fair professional remuneration, the attorney is not entitled to recover the amount due on the note. (*g*) It seems, in such a case, he may recover a sum which is equivalent to the services rendered by him. (*h*) But where, in consideration of an agreement not to bid, a note is executed, it is not void on the ground of being opposed to public policy. (*i*)

Wagering contracts.

Agreements by way of wager are void under the Indian law (*j*), and promissory notes, bills of exchange or cheques given in respect of a gambling transaction are void. The payee of such an instrument cannot maintain an action against the maker, or the drawer. (*k*) But a person who lends money to another to pay such debts, (*l*) or who lends money so as to enable the defendant to continue gambling (not expressly declared unlawful), can recover the money from such person. (*m*) Even an indorsee of a note with notice that it was

(*a*) *Mottai* v. *Thanappa*, 37 Mad. 385.

(*b*) *Sunder* v. *Bhagoo*, 62 I.C. 70 (Pat.).

(*c*) *Jaikumar* v. *Gaurinath*, 28 All. 718; *Flower* v. *Sadler*, (1882) 10 Q. B. D. 572 (C. A.); *Radhakishen* v. *Sital Prasad*, 94 I. C. 465; *Majibar Rahman* v. *Muktashed*, 40 Cal. 113 (P.C.); *Deb Kumar* v. *Anant Bandhu*, 35 C. W. N. 26.

(*d*) *Beeley* v. *Wingfield*, (1809) 11 East. 46.

(*e*) *Sashannah* v. *Ramasami*, 4 M. H. C. R. 7; *Adiraji* v. *Villal*, 1 L.W. 300.

(*f*) *Pramatha* v. *Sheikh Abdul*, 27 C. W. N. 430.

(*g*) *Brojendra Nath* v. *Luckhimoni Dassee*, 29 Cal. 595.

(*h*) *Anantayya* v. *Padmayya*, 16 Mad. 278.

(*i*) *Mahadeo* v. *Khewal Ram*, 44 I. C. 223 (Nag.); *Nagappa* v. *Ah Foke*, 56 I. C. 963.

(*j*) Ind. Contract Act, sec. 30; *Woolf* v. *Hamilton*, (1898) 2 Q. B 337 (C. A.).

(*k*) *Trikam Damodhar* v. *Lala Amir Chand*, 8 B. H. C. R. 131 (A. C. J.); *C. W. Joseph* v. *E. R. Solano*, 9 B. L. R. 441; *Moulis* v. *Owen*, (1907) 1 K. B 746.

(*l*) *Pringle* v. *Jafar Khan*, 5 All. 443; *Gauzi Ram* v. *Jailal*, 13 I. C. 319; *Ramalinga* v. *Muthu*. 29 I. C. 573 (Mad).

(*m*) *Subbaraya* v. *Devandra*, 7 Mad. 301; *Ramalinga* v. *Muthu*, 29 I. C. 573 (Mad.); *Societe Anonymae* v. *Baumgart*, (1927) 96 L. J. K. B. 789.

executed in respect of a gambling transaction can recover thereon. (*a*) It is to be noted that such agreements, under the Indian Contract Act, are only void, and not illegal. When two persons agree only to the payment of differences between the prices of goods at the time of the bargain and at some later date, then such agreement is by way of wager, and a note executed in respect of such transaction is void under the law. (*b*) But speculation does not involve a contract by wager, and a common intention to wager is essential to such a contract. (*c*)

Sec. 58.

Prohibited by law.

Again, agreements made for or about anything which is prohibited and made unlawful by Statute, or which if allowed, will defeat the provisions of any law, are likewise void. So, where a promissory note was given as consideration for the transfer to the defendant of the plaintiff's rights under a toddy lease, it was held that such a consideration was illegal under section 22 of the Madras Abkari Act, and that the promissory note could not be enforced. (*d*) If part of the consideration for a bill or note is fraudulent or illegal, the instrument is vitiated altogether. (*e*) While partial want or failure of consideration vitiates the instrument only *pro tanto*, the partial illegality of consideration vitiates it *in toto*. (*f*) This is based on the ground of public policy, for, "where the parties have woven a web of fraud or wrong, it is said to be no part of the duty of the courts of justice to unravel the threads." Where however, the illegal portion is distinct and severable, there seems to be no objection to allow the legal portion in favour of the payee. (*g*)

Forgery.

Whether a person to whom an instrument is transferred by means of a forged indorsement is a holder or not within the meaning of section 8 *ante* is not indicated by the Act itself. The English Statute is explicit (*h*) and states that where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or the unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor, or to enforce payment against any party thereto can be acquired through or under that signature, unless the party against whom it is

(*a*) *Lilley* v. *Rankin*, (1887) 56 L. J. Q. B. 248.

(*b*) *Kesari Chand* v. *Merwanjee*, 1 Bom. L.R. 263. Cf. *Ajudhia Prasad* v. *Lalman*, 25 All. 38; *Kong Yee Lone & Co.* v. *Lowjee Nanjee*, 29 Cal. 461 (P. C.)

(*c*) *Bhagwandas* v. *Burjorji*, 42 Bom. 373 (P. C.); *Ganga Das* v, *Jekison Das*, 25 Bom. L. R. 520; *Sukdedoss* v. *Govindoss*, 51 Mad. 96 (P.C)

(*d*) *Sadini Kondayya* v. *Kosagani Peda Swami*, (1915) M. W. N. 25.

(*e*) Ind. Contract Act, sec. 24; *Srirangachariar* v. *Ramaswami*, 4 M. L. J. 106. Cf. *Jones* v. *Gordon*, (1877) 2 A. C. 616.

(*f*) Byles (19th Edn.) 143; *Moulis* v. *Owen*, (1907) 1 K.B. 746, 753; *Balgobind* v. *Baggumal*, 35 All. 558.

(*g*) *Robinson* v. *Marsh*, (1921) 2 K. B. 640.

(*h*) B. of Ex. Act, sec. 24.

Sec. 58.

sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. This omission, whether intentional or not, to provide for such cases has given rise to some divergence of opinion on the point. It was argued in a case in Bombay (*a*) on the strength of this silence of the Indian Act, that the Indian law makes no distinction between the effect of forgery and that of any other offence and that in the absence of a provision corresponding to section 24 of the English Act, the matter must be taken to have been dealt with under the present section, which gives the holder in due course a good title, no matter what offence including forgery has been committed in the course of the negotiation. According to this contention, if once a holder in India is shown to be a holder in due course, he has a good title notwithstanding a forged indorsement. Considering the definition of a holder and a holder in due course in sections 8 and 9, and the prominence given to the facts of possession in both the sections, it would seem that there is some force in the above contention which did in fact commend itself to Justice Stephen, who refused to recognise in India the well-known distinction in English law between cases of no title and those of defective title ; but the learned judge's discussion of section 58 is very cursory (*b*), and the case has not been followed in later cases. (*c*)

Forgery conveys no title.

The better opinion is that forgery stands on a different footing from all other offences by which a bill or note may be negotiated, because in the case of forgery, the party, who is sought to be charged with liability cannot be accused either of negligence or any act of his, by which he helps such fraud to be committed ; while in the case of other offences such an element is always present. The principle that forgery confers no title, and a forged indorsement should be treated as a nullity as if it were not there at all, is of such universal application and so widely recognised by the Law Merchant, (*d*) that it is in the last degree improbable that the Legislature would overthrow such fundamental principles or depart from the general system of law without expressing its intention with irresistible clearness ; and to give any such effect to general words simply because they have that meaning in their widest or usual or natural sense, would be to give them a meaning in which they were not really used. (*e*) This is on the

---

(*a*) *Hunsraj* v. *Ruttonji Walji*, 24 Bom. 65, 68.

(*b*) *Chandrakali* v. *Chapman*, 32 Cal. 799.

(*c*) *Banku Behari* v. *Secretary of State*, 36 Cal. 239 ; *Jai Narain* v. *Mahbub Bakhsh*, 28 All. 428.

(*d*) *Vagliano Bros* v. *Bank of England*, 23 Q.B.D. 243, 248, per Lord Esher. M. R.

(*e*) Maxwell on Interpretation of Statutes, (5th Edn.) 123.

supposition that this section deals with cases of forgery also. If we examine the section carefully, it is not difficult to come to the conclusion that the section does not include, nor was it intended to include cases of forgery. For, the section speaks of the negotiable instruments *obtained* from any maker, etc. The section applies only to cases where some offence is committed in *obtaining* possession from the holder, and forgery cannot be said to be an offence committed *in the* obtaining of it; it is an offence generally committed *after the* obtaining of the paper. In this view, it must be held that section 58 does not apply to cases of forgeries, and there being no other provision made in the Act for such a case, it will be presumed that the Legislature thought fit to leave the matter to be controlled by the ordinary rules of the Law Merchant applicable to negotiable instruments.

Even before the Act, the law in India was the same as under the English law, that forgery did not convey any title even to an innocent transferee. (*a*) The same is the rule applicable to hundis, (*b*) though the Bombay High Court has held under a special custom, in case of hundis, that the holder of a forged hundi may relieve himself from liability by producing the forgerer. (*c*) This view also seems founded on common-sense, for to hold otherwise would be to enable any person to draw a bill as if drawn by another and put it in circulation. Nor can the innocent transferee complain, because when he took the instrument, he relied on the undertaking of his transferor that the prior indorsements are genuine and that the instrument is regular and good as it purports to be; and further, he has his remedy against him for breach of the warranty implied in the indorsement. It is to be noticed further that section 85 enacts a special provision in the case of cheques for the protection of a banker who pays it on indorsement purporting to be made on behalf of the payee or the indorsee, thereby showing that in other cases, there is no such protection. The above view is supported by decisions of Bombay, Allahabad, and Sind, (*d*) and is in accordance with the reported English cases. The observations of Stephen, J. in *Chandra Kali Dabee* v. *Chapman* (*e*) to the contrary, are only *obiter*, and they were held not to be sound in a later case on the Original Side of the High Court of Calcutta. (*f*) As flowing from the above proposition that a forgery

(*a*) *Bank of Bengal* v. *Fagan*, (1849) 7 Moore P. C. C. 61, 71.

(*b*) *Takur Das* v. *Futteh Mull*, 7 B. L. R. 275; but see *Goursi Mull* v. *Dhansuk*, 7 B. L. R. 289 (Note).

(*c*) *Davlat Ram* v. *Bulaki Das*, 6 B.H. C. R. 24.

(*d*) *Hunsraj* v. *Ruttonji* 24 Bom. 65; *Thorappa Devenappa* v. *Umedmalji*, 25 Bom. L. R. 604; *Jai Narain* v. *Mahbub Bakhsh*, 28 All. 428; *Kodumal* v. *The Karachi Bank, Ltd.*, 15 S. L. R. 93 on appeal (1923) Sind 54.

(*e*) 32 Cal. 799.

(*f*) *Banku Behari* v. *The Secy. of State for India*, 36 Cal. 239.

Sec. 58.

cannot confer title, it has been held, that a person who holds a negotiable instrument under a forged indorsement can himself confer no title, and if the note is renewed by another, the effect of the renewal is merely to substitute one document of title for another, and it could not deprive the original owner of the note, of his rights to the renewed note. (*a*) But, this proposition has been dissented from in two later cases, (*b*) where it was held, that the new debentures taken in renewal of the old ones which had been indorsed under a forged indorsement were separate negotiable instruments from the old debentures, and as on them there was no forgery, any person taking the new debentures without fraud, or any notice of the same, is entitled to be protected as a *bona fide* holder for value. In coming to the conclusion, the learned judges distinguished the case in *Lee* v. *Zagury* (*c*) on the ground that the indorsee in that case who took it under the forged indorsement and obtained a renewal in his own name, was himself subject to equities, as the bill was indorsed after maturity. The above two cases have been confirmed on appeal, by the Privy Council. (*d*)

Estoppel against plea of forgery.

Though ordinarily forgery is incapable of ratification, (*e*) in some cases, persons may be estopped from putting forward the defence of forgery, as where the acceptor admits the authenticity of his signature, in which case he will be precluded from pleading that his name was forged. (*f*) In like manner, if the signature on the instrument is forged and it comes to the knowledge of the party whose signature on the instrument is forged, that party may, if he does not give the information of the forgery, be estopped from setting it up or relying upon it. (*g*) This principle was illustrated in a recent case in England. A husband and wife had a joint account in a Bank, and subsequently a sole account in the name of the husband in which the wife had no authority to operate. During the currency of both the accounts, the wife repeatedly forged the husband's signature and his account was depleted by cheques. The husband became aware of the forgeries, but he kept silent for eight months being persuaded thereto by his wife. When he finally determined to disclose, his wife committed suicide.

(*a*) *Hunsraj* v. *Ruttonji*, 24 Bom. 65, 74.

(*b*) *Mercantile Bank of India Ltd*, v. *Mascarenhas*, 52 Bom. 792, 795; *Mercantile Bank of India Ltd.* v. *Caeiro*, 52 Bom. 807.

(*c*) (1817) 8 Taunt, 114.

(*d*) *Mascarenhas* v. *Mercantile Bank of India*, 56 Bom. 1.

(*e*) *Brook* v. *Hook*, (1871) L. R. 6 Ex. 89.

(*f*) *Leach* v. *Buchanan*, (1802) 4 Esp. 226.

(*g*) *William Ewing & Company* v. *The Dominion Bank*, (1904) A. C. 806. Cf. *Oglivie* v. *West Australian Mortgage and Agency Corporation*, (1896) A. C. 257; *Lewes Steam Laundry Co.* v *Barely* (1906) 95 L. T. 944; *Kepitigalla Rubber Estates* v. *National Bank of India*, (1909) 2 K. B. 1010. Cf. *Bank of Ireland* v. *Evans Trustees*, (1855) 5 H. L. C. 389.

In a suit by the husband against the bank, it was held, that he was estopped from asserting the forgery, for he had delayed in informing the bank, thereby preventing it from recovering the money wrongfully paid on the cheques. (*a*) The doctrine of estoppel depends upon a duty to disclose. To raise an estoppel, it is necessary to prove that the silence after knowledge of the forgery induced the party, seeking to set up estoppel, to take some step to his prejudice. The negligence must be in the transaction itself, and the detriment must be the natural and probable consequence of the negligent conduct of the other. (*b*) Hence, if a disclosure made with the utmost diligence would not have been in time to arrest the prejudicial step, an estoppel may not arise, (*c*) and there is no duty to inform a person of a forgery, if his agent is already in possession of such information. A person is certainly not estopped from setting up the same defence of forgery in the case of another similar bill. (*d*) The fact that the customer does not examine his pass-book, when it is periodically returned to him, does not preclude him from recovering from the bank, amounts paid in respect of cheques, the signatures to which were forged, although such cheques were debited to his account in his pass-book. (*e*) This principle that no right can be founded on a forged bill has been applied to cases, where a person purporting to act for a company, signs bills in fraud of the company outside the scope of his ostensible authority. (*f*) For estoppel against the acceptor accepting the instrument knowing or having reason to know that the indorsement is forged, see section 41 ; and for estoppel against the indorser, precluding him from setting up the forgery of the prior indorsements, see section 122.

How far a defence of fraud, etc., may be successfully set up to an action on a negotiable instrument or how far inquiry into the consideration for the paper is admissible, depends upon many circumstances. The general rule is, as between immediate parties, the defendant may set up any defence which he might have set up if the action had been brought on any simple contract. As to who are immediate parties to an instrument, the 'explanation' to section 44 makes the point clear. A defence may be such as relates to the instrument itself, in which case it is good even as against a holder in due course. For example, absolute incapacity of the defendant to make a contract, forgery of parties to a signature, absence of effective delivery—any of these

(*a*) *Greenwood* v. *Martin's Bank Ltd.*, (1932) 1 K. B. 371.

(*b*) *Ibid.*, 381, 386.

(*c*) *M'Kenzie* v. *British Linen Co.*, (1881) 6 A. C. 82.

(*d*) *Morris* v. *Bethell*, (1869) L. R. 5 C. P. 47.

(*e*) *Walker* v. *Manchester and Liverpool Banking Co.*, (1913) 108 L. T. 728 ; *Kepitigalla Rubber Estates* v. *National Bank of India*, (1909) 2 K.B. 1010, 1028 ; *Vagliano* v. *Bank of England*, (1889) 23 Q. B. D. 263.

(*f*) *Kredit Bank* v. *Schenkers*, (1927) 1 K. B. 826.

Sec. 58. may be pleaded as defence against any person, except in cases where such defence is complicated by any question of estoppel. Sometimes, a defence may be not on the instrument itself, but only in the manner in which the instrument has been obtained or the legality of the consideration therefor. Such a defence has been classed by some text-writers as a personal defence, while the other kind of defence is termed the real defence i.e., a defence attaching to the *res*, that is, the instrument itself; personal defences are available only against certain particular persons, that is, the persons who stand in immediate relationship with the defendant and those between whom and himself there is privity. Such privity is created either by want of consideration or by agreement or by notice. (*a*) Therefore, as between immediate parties and between parties one of whom is not a holder in due course, equities can be successfully pleaded in a suit on the instrument. But the equity must be one, attaching to the bill itself and not any claim arising out of collateral matters, such as the right of set-off, (*b*) though it seems that by agreement it may be made so. (*c*) The plea of fraud in the obtaining of the instrument is good only against immediate parties but not against a holder in due course, except in cases similar to *Foster* v. *Mackinnon*. (*d*) Again, the defence that the instrument had been negotiated in breach of an agreement to use it for a particular purpose only, cannot be pleaded against a holder in due course. In such cases, when once it is proved that there has been a breach of faith and fraud, it is on the holder to prove that he gave value for the note in good faith. Thus, where a bill is fraudulently negotiated instead of being discounted as agreed upon, (*e*) or where a partner accepts a bill in the firm's name in fraud of the other partners, (*f*) the holder is not protected unless he proves that he was a holder for value in good faith. A holder of a bill given under undue influence may be restrained from negotiating the same, if he was a person who had notice of the fact. (*g*)

So also, as a general rule, illegality of consideration, whether total or partial, is merely an equity attaching to an instrument, and is a defence only against an immediate party or a remote party who is not a holder in due course. Where, however, the consideration is declared by law to be illegal, a distinction has to be observed. Where

(*a*) See notes to section 44 *ante*, p. 208; *Robinson* v. *Reynolds*, (1841) 2 Q. B. 196.

(*b*) In re *Overend Gurney & Co.*, (1868) L. R. 6 Eq. 344, 359; *Whitehead* v. *Walker*, (1842) 10 M. & W. 696.

(*c*) See *Holmes* v. *Kidd*, (1858) 28 L. J. Ex. 112. (Ex. Ch.).

(*d*) (1869) L. R. 4 C. P. 704.

(*e*) *Smith* v. *Braine*, (1851) 16 Q. B. 244; *Tatam* v. *Haslar*, (1889) 23 Q. B. D. 345; Cf *Hornby* v. *McLaren*, (1908) 24 T. L. R. 494.

(*f*) *Hogg* v. *Skeen*, (1865) 18 C. B. N. S. 426.

(*g*) *Maitland* v. *Backhouse* (1847) 16 Simon 58,

the Statute declares that a bill given for some specific consideration is entirely void and prohibits absolutely the issue of such instruments, then it is void not only in the hands of the immediate party taking it, but is void in the hands of all parties whether immediate or remote, (*a*) though it may happen that the indorser will be liable on his indorsement to the indorsee. (*b*) As regards the defence of absence or failure of consideration, the subject has been dealt with already, under sections 44 and 45.

Instrument acquired after dishonour or when overdue.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Accommodation note or bill.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

ILLUSTRATION.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

NOTES.

As a general rule, the holder for value of a negotiable instrument is not affected by the defect of title in his transferor, as his title does not depend so much upon the title of the prior holder as on the manner of his acquisition. But this rule is subject to

(*a*) Chalmers (10th Edn.) 123; Shepherd's Contract Act (11th Edn.) 1154; *Edwards* v. *Dick*, (1821) 4 B & Ald. 212.

(*b*) *Edwards* v. *Dick*, (1821) 4 B. & Ald. 212.

Sec. 59.

two important exceptions :— (1) When the holder acquires it after maturity, and (2) when he acquires it with notice of dishonour. Apart from this section, it would follow from the definition in section 9, that a holder is not a holder in due course, for he must have acquired title before the amount mentioned in the bill became payable, (*a*) the reason is that he takes a bill which, on the face of it, ought to have gone home and been paid ; he ought to have made inquiries which, if he did, would have disclosed to him the defect of title of his transferor, and if he does not do so, he should suffer for his negligence. (*b*) Besides, the negotiation of an overdue bill is out of the usual and ordinary course of dealing ; that circumstance itself is enough to raise suspicion that it has been "disgraced." (*c*) In fact, the transfer of overdue bills, like the transfer of ordinary chattels, gives no better title to the transferee than the transferor's, notwithstanding that the transferee may have paid consideration *bona fide*. (*d*) Thus, where a promissory note issued by a banker was transferred to the plaintiff for value after it had become due, by an agent of the bank acting without authority, it was held that the plaintiff was subject to the equities affecting it in the hands of the agent. (*e*) An agreement between the drawer and the acceptors that the latter should deposit certain canvas as collateral security for the payment of the bill, was held provable against an indorsee after maturity, and his action was dismissed on the finding that the drawer had sold the canvas and retained the proceeds. (*f*) The principle has been applied to the following case which has some peculiar circumstances arising in it. The defendant gave three promissory notes to cover his indebtedness to the payee, and subsequently two more notes, in substitution for the first three and to cover further advances. All the notes were payable on demand and were given on the understanding that they should not be negotiated. The payee indorsed all the five notes generally to the plaintiffs. After the payee had so negotiated the notes, the defendant paid to him the amount due on the last two notes, but the defendant was not aware that the payee had parted with the notes, and did not ask for or receive any of them from him. At a later date, the payee obtained the five notes from the plaintiffs by fraud, and handed them over to the defendant. In an action by the plaintiffs on the notes, it was held that the defendant, when he received back the notes, did not become holder for value, since the previous satisfaction of the notes by him

Holder of a bill overdue.

(*a*) Chalmers (10th Edn.) p. 142.

(*b*) (1918) M. W. N. (Sh. N.) 112.

(*c*) *London and County Bank* v. *Groome*, (1881) 8 Q. B. D. 288, 292 ; *Tinson* v. *Francis*, (1807) 1 Camp. 19.

(*d*) *Ashurst* v. *Royal Bank of Australia* (1856) 27 L. T. 168.

(*e*) *Hudson* v. *Royal Bank of Australia* (1857) 29 L. T. (O. S.) 92.

(*f*) *Holmes* v. *Kidd*, (1858) 28 L. J. Ex. 112, (Ex. Ch.)

was not a consideration given by him when he received back the notes, and that as they were then overdue, he acquired no better title than the payee had while they were in his hands, and that the plaintiffs, being entitled to disaffirm the transaction between themselves and the payee, by which the latter obtained possession of the notes, could recover in the action. (*a*) In the case of the instrument which had been dishonoured, the holder, when he knows that fact before taking the bill, is put on guard, and he ought to have made inquiries about the title of his transferor. Therefore, when an indorsee takes a bill with notice of dishonour, he is bound by an agreement made in regard to the bill by prior indorsers before dishonour, (*b*) and is subject to any condition between the drawer and drawee, though he had no notice of it ; (*c*) again, if the bill has been indorsed in breach of faith, an indorsee after dishonour cannot recover the amount due thereon (*d*).

Holder of a bill dishonoured.

As to when a bill or note is said to be at maturity, see notes to sections 22 to 25. A bill or note, if payable otherwise than on demand, is not overdue till after the expiration of the last day of grace. So, if a bill or note be indorsed on the very day on which it is due, then the indorsee cannot be said to be a holder of a bill overdue. (*e*) Between bills and notes payable on demand, the English law draws a distinction which is also to be found in America. A bill payable on demand is deemed to be overdue under the Bills of Exchange Act, when it appears on the face of it to have been in circulation for an unreasonable length of time. (*f*) The reasonableness or unreasonableness of time is a question of fact to be determined in each ease. As to cheques, the matter was considered by Field J. in *London and County Bank* v. *Groome*, (*g*) where he was of opinion that the real question is whether a stale cheque was taken under circumstances as ought to have excited suspicion, and lapse of time being a circumstance to be considered. A cheque in circulation after eight days from the date of its issue was held not to be overdue ; (*h*) while one after two months was held to be overdue. (*i*) In the case of a note payable on demand, it is said that it can be put in circulation for an indefinite length of time, and under the Bills of Exchange Act it is not said to be overdue for the

Maturity of 'demand' bills and notes.

Eng. Law.

(*a*) *Nash* v. *De Freville*, (1900) 2 Q. B. 72.
(*b*) *Crossley* v. *Ham*, (1811) 13 East 498.
(*c*) *Holmes* v. *Kidd*, (1858) 28 L. J. Ex. 112. (Ex. Ch.)
(*d*) *Hornby* v. *McLaren*, (1908) 24 T. L. R. 494.
(*e*) *Leftley* v. *Mills*, (1791) 4 T. R. 170; *Kennedy* v. *Thomas*, (1894) 2 Q. B. 759.
(*f*) B. of Ex. Act, sec. 36 (3).
(*g*) (1881) 8 Q. B. D. 288.
(*h*) *Ibid.*
(*i*) *Serrell* v. *Derbyshire Ry. Co.*, (1850) 9 C. B. 811.

Sec. 59. purpose of affecting the holder with defects of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. (*a*) This is put upon the ground that a promissory note payable on demand is a continuing security not meant for circulation like other negotiable instruments. In the Indian Act, there is no provision to indicate when a negotiable instrument payable on demand becomes overdue for the purpose of affecting the subsequent holders with notice of defects; nor is there any provision to warrant the distinction made between bills or notes payable on demand, as made in England. On the other hand, it may be noticed that the Act places bills and notes payable on demand on the same footing with reference to presentment for payment. (*b*) Prior to the passing of this Act, one of the tests applied to ascertain whether a note was overdue or not was to find out whether there was any evidence of demand; even from a partial discharge, the inference was made that the demand ought to have been made and so the note was overdue. (*c*) In an earlier case, (*d*) however, one of the judges who took part in the above decision wanted to apply the American rule, that a note is overdue by the mere fact of its remaining in the hands of the holder for an unreasonable length of time (2 years 11 months); but this test, though available, was not applied by the learned Judge in the later case above noted. Where the plaintiff took on the 28th of September, a cheque drawn on the 5th of June in good faith for consideration and without any notice of dishonour or defect of title, it was held that the plaintiff was not a holder in due course entitled to protection, as from the face of it, the cheque was stale and this was or ought to have been sufficient notice to the plaintiff that payment was overdue. (*e*) This principle applied to a cheque was not, however, applied in a later case in Madras, (*f*) where an indorser, of a promissory note nearly two years and ten months after its execution, was held to be a holder in due course, as it was not alleged in the case that there was any circumstance to show, that the note was overdue at the time of indorsement and that the indorsee knew of it. (*g*) But, where an assignment is made after an unsuccessful demand had been made, the indorsee cannot be a holder in due course, but is subject to equities; so that if payment is proved, he can recover only the

Ind. Law.

(*a*) B. of Ex. Act, sec. 86 (3); *D. N. Shaha & Co.* v. *The Bengal National Bank, Ltd.*, 47 Cal. 861. (where the section was applied).

(*b*) Sec. 74, *post.*

(*c*) *Harry Van* v. *Dhunna Lall*, 5 Mad. 108.

(*d*) *Commundun Mohideen* v. *Oree Meerah*, 7 M. H. C. R. 271, 277.

(*e*) *Ram Sarup* v. *Hardeo*, 50 All. 309.

(*f*) *Ramanadhan* v. *Gundu*, (1928) Mad. 1238.

(*g*) *Sivarama* v. *Moideen*, 33 Mad. 34; *Shaha & Co.* v. *The Bengal National Bank*, 47 Cal. 861; *Bulaqi* v. *Abdul Rahim*. (1923) Lah. 638.

balance. (*a*) A demand will, however, not be inferred merely from the fact that there were payments indorsed on the note, for the usual presumption would be that "no more than what has been entered has been paid to the maker." (*b*) The case is, however, clear, if there is no such indorsement and the plaintiff had no notice of any demand of payments. (*c*) The question has arisen in some of the above cases in connection with the defence of the defendant that money has been paid by the payee or an intermediate indorser. But, the fact that prior to indorsement, the promissory notes had been paid-off, cannot be set up against a *bona fide* holder for value without notice of that fact, for a negotiable instrument remains current though paid, and there is nothing to prevent a person to whom it has been indorsed for value, without knowledge that it has been paid, from suing. (*d*) It is also the fault of the maker if he did not indorse the payment on the note or take back the instrument after payment. By allowing it to remain in the hands of the payee, he assists in perpetrating a fraud and is therefore bound to suffer. (*e*) In this state of authorities, it is difficult to lay down any definite rule, but the following is submitted to be the true principle to be applied in such cases: when a negotiable instrument payable on demand is in the hands of any holder for an unreasonable length of time, the person taking it from him may be said to be put on inquiry as to the title of such person, for the instrument must have been presented before a reasonable time, and has not been done so. This is deducible from section 74. It is to be noted that according to this rule, the maturity of a negotiable instrument payable on demand may be extended to a period just short of the period of limitation, by each holder negotiating it away to another within a reasonable time after he receives it. Reasonable time as to bills payable on demand, may vary from that applicable to promissory notes payable on demand, as such reasonable time depends, among other things, on the nature of the instrument. (*f*)

Subject to equities of the bill.

"*Has the rights thereon of his transferor*". The better expression seems to be "is subject to all equities," or "is subject to its (instrument's) equities." A holder taking an instrument with notice of dishonour at, or after maturity takes it solely upon the credit of his

(*a*) (1918) M. W. N, (sh. n) 112.

(*b*) *Muthu* v. *Velu*, (1916) 2 M.W.N. 107; but see *Rutherford* In re, 14 Ch. D. 687; *Bamfield* v. *Tupper*, (1851) 7 Ex. 27.

(*c*) *Annamalai* v. *Maung Saing*, (1927) Rang. 161.

(*d*) *Glasscock* v. *Balls*, (1890) 24 Q. B. D. 13; *Muthu* v. *Velu*, (1916) 2 M. W. N. 107; *Ramanathan* v. *Gundu*, (1928) Mad. 1238.

(*e*) *Annamalai* v. *Maung Saing*, (1927) Rang. 161; *Muthu* v. *Velu*, (1916) 2 M. W. N. 107; but see 36 L. W. (sh. n.) 29, and notes to secs. 81 and 90 *post*.

(*f*) See sec. 105, *post*.

Sec. 59. transferor, and cannot complain if he is subjected to the equities arising on the instrument, (*a*) that is to say, such equities as exist at the time of transfer, and not those arising subsequently or even collaterally. (*b*) The holder who takes the instrument, takes it subject to such inherent vices as the bill was tainted with at the time of the transfer, *e.g.*, fraud, duress or illegality of consideration. It may be shown also that a payment had been made, or that there has been an accord and satisfaction before the transfer; but Chalmers thinks that this is not an equity arising in the case, but that the paper itself being worthless, the transferee does not get any title to it. (*c*) Partial or total failure of consideration may be shown, and partial payment is also an equity subject to which the holder takes. An instrument may be shown to have been given for a special purpose, (*d*) or that it was indorsed in violation of a trust, or that it was given on a condition. (*e*) So also, where bills or notes are passed for any balance of fluctuating accounts, or where collateral security is given with power to drawer to sell them and discharge the bill (see the illustration to the section)—in these cases, the holder will be subject to the above equities. If a bill or note is bought by the transferor with stolen money, or trust money, the real owner or beneficiary may claim to follow the bill or note in the hands of a transferee of a bill or note overdue. Set-off is not treated as an equity arising on the instrument, and so it cannot be pleaded against a holder of a bill or note overdue. (*f*) In this respect, the negotiation of a bill differs from the assignment of a chose-in-action in that, that a set-off is an equity to which the assignee is subject. (*g*)

Though indorsement after due date confers no better title on the transferee than what the transferor has, it confers all his rights on the transferee; and so, if such transferor is a holder in due course, then a transferee after maturity gets all his rights, *i.e.*, he virtually becomes a holder in due course. It has been recently held that an indorsee is entitled to recover the full amount expressed on it, and it is not open to the maker of the note payable on demand to plead against a holder in due course that he paid the money to the indorser before the indorsements, since by this section the holder is affected only if he acquired

(*a*) *Hazari Mull* v. *Sobagh Mull*, 9 B. L. R. 1.

(*b*) *Harry Van* v. *Dhunna Lall*, 5 Mad. 108.

(*c*) Chalmers (10th Edn.) 141, 142.

(*d*) *Graves* v. *Key*, (1832) 3 B. and Ad. 313, 319; *Lloyd* v. *Howard*, (1850) 15 Q. B. 995.

(*e*) *Holmes* v. *Kidd*, (1858) 28 L. J. Ex. 112.

(*f*) Cf. *Harry Van* v. *Dhunna Lall*, 5 Mad. 108, 112.

(*g*) *Bennett* v. *White*, (1910) 2 K.B. 1; *The Board of Trade* v *The Employer's Liability Assurance Corporation Ltd.*, (1910) 2 K. B. 649 at 652 (note); *Arunachellam* v. *Subramanian*, 30 Mad. 235.

the note after dishonour; and the next section, though it prohibits negotiation by the payee after payment or satisfaction, does not affect a holder in due course. (*a*)

Proviso.

The proviso to the section enacts an exception to the rule enunciated in the section. It lays down in somewhat obscure language that in the case of accommodation bills or notes, the rule in the section shall not apply. The holder of an accommodation instrument after maturity is in the same position as the holder before maturity, and he can recover the amount from the parties *prima facie* liable on it. This provision is in accordance with the English Bills of Exchange Act; (*b*) but it has been held that if there is an agreement, express or implied, not to negotiate a bill after maturity, the agreement is an equity attaching to the bill and will affect a holder for value after maturity. (*c*) In certain States in America, it has however been held, that a holder of an accommodation bill after maturity, cannot recover from the person whom his transferor cannot sue successfully, as the engagement of an accommodating party lasts only up to the time of maturity. (*d*)

Accommodation bills.

The proviso is applicable only when a holder after maturity takes the instrument for consideration and in good faith. If he does not pay consideration for getting the instrument, he gets only the rights of his transferor, and cannot recover the amount from the party from whom his transferor cannot recover. What is meant by 'good faith' in this proviso is difficult to understand. If by good faith' it is meant that the holder, when acquiring title to an overdue bill, should have no notice of the accommodation character of the instrument, then the proviso is not in accordance with English law. The better explanation perhaps is that it should not be acquired for the purpose of embarrassing, or otherwise defrauding the accommodating party by acting in collusion with the accommodated party; or perhaps, it may mean 'without notice of any vicious character of the bill, such as fraud, duress or illegality of consideration.'

Instrument negotiable till payment or satisfaction.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after

(*a*) *Muthu* v. *Velu*, (1916) 2 M. W. N. 107.

(*b*) B. of Ex. Act, sec. 28 (2); In re *Overend Gurney & Co.*, (1858) L. R. 6 Eq. 344.

(*c*) *Parr* v. *Jewell*, (1855) 16 C. B. 684.

(*d*) Daniel, sec. 726.

Sec. 60. maturity, but not after such payment or satisfaction.

NOTES.

Negotiable, how long?

A bill of exchange is negotiable *ad infinitum*, until it has been paid or discharged on behalf of the acceptor. (*a*) As to when a bill or note is discharged, see sections 78 and 82 to 90. If the bill is paid or satisfied before maturity, then it is not a payment in due course, but one by anticipation, and hence does not discharge the bill so as to make it not negotiable. In such a case, the bill cannot be said to be paid by him *animo solvendi* in order to extinguish it, but only to redeem himself from the situation in which he stood upon the bill. (*b*) If the bill is allowed to remain in the hands of a holder after payment or satisfaction before maturity, an innocent transferee from him can recover the amount from the party liable on the instrument; (*c*) but it is said that where the payee of a lost note got a duplicate from the maker, but the original was afterwards found by the maker's widow after his death who negotiated the same, the indorsee cannot recover. (*d*) This is based on the ground that the first note had become discharged by the execution of the new note and that subsequent negotiation of the same cannot confer any right on the holder. It is difficult to see how far this decision is correct. It will be noticed that the very object of insisting on an indemnity is to provide for such cases as these; and the loss must be placed rightly on the person who was responsible for the loss, and not on an innocent transferee like the holder of the original note. (*e*) If the drawee or acceptor gets the bill after paying it before maturity the bill is said to be retired, and can be re-issued by the acceptor before maturity; (*f*) but the drawee or acceptor cannot re-issue the bill after paying the amount at or after maturity, because the bill is discharged by such payment. (*g*) Again, a bill may be indorsed in favour of the drawee or the acceptor, and he can negotiate it before maturity.

Till payment at maturity by acceptor.

The above rule is applicable to the case of promissory notes also. The maker if he pays the note before maturity, or becomes an indorsee

(*a*) Per Lord Ellenborough in *Callow* v. *Lawrence*, (1814) 3 M. & S. 95; B. of Ex. Act, sec. 36 (1).

(*b*) *Beck* v. *Robley*, 1 H. Bl. 89 (n).

(*c*) *Muthu* v. *Velu*, (1916) 2 M. W. N. 107; *Annamalai* v. *Maung Saing*, (1927) Rang. 161; (1932) M. W. N. (Sh. N.) 87.

(*d*) 36 L. W. (N. R. C.) 29.

(*e*) Cf. *Nash* v. *De Freville*, (1900) 2 Q. B. 72.

(*f*) *Morley* v. *Culverwell*, (1840) 7 M. & W. 174, 182; *Attenborough* v *Mackenzie*, (1856) 25 L. J. Ex. 244; *Harmer* v. *Steele*, (1849) 4 Ex. 1.

(*g*) *Burbridge* v. *Manners*, (1812) 3 Camp. 193; *Dod* v. *Edwards*, (1827) 2 C. & P. 602.

before the due date, may re-issue it before maturity so as to make himself liable thereon. According to the section, a bill ceases to be negotiable when paid or satisfied only by or on behalf of the drawee or the acceptor at or after maturity, and not by any other. The party ultimately liable on the instrument must pay it at or after maturity, and then only will its negotiability cease. If a bill or note is produced by the acceptor or maker after maturity, the natural presumption under the circumstances is that it had been discharged by that person. (*a*)

The fact, that a bill or note is overdue or even that it has been dishonoured, is no bar to its further negotiation. (*b*) A bill or note may be negotiated even after a suit is brought on it, but if the negotiation was for the purpose of embarrassing the other party, that party may obtain an injunction to restrain the holder from negotiating it. According to the Civil Procedure Code, O. VII, R. 14, the party suing on the bill or the note must file it along with the plaint in Court, and hence this question is not likely to arise in India. After judgment is obtained, the bill or the note becomes merged in the judgment. (*c*)

(*a*) Cf. *Shearman* v. *Fleming*, 5 B. L. R. 619.

(*b*) *Deuters* v. *Townsend*, (1864) 33 L. J. Q. B. 301.

(*c*) Chalmers (10th Edn.) 139.

CHAPTER V.

OF PRESENTMENT.

Presentment for acceptance.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

*Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

NOTES.

By Act XIV of 1916 as amended by Act IX of 1917, provision was made for excusing the delay in presentment for acceptance, if the delay was due to circumstances arising out of the War. The legislative provisions are reproduced in the next paragraph :

---

*This paragraph was added by section 4 of the Negotiable Instruments Act II of 1885.

"Section 2. Notwithstanding anything contained in the Negotiable Instruments Act, 1881, or in any other enactment for the time being in force, delay in presentment for payment of a bill of exchange, where the proper place for payment is outside British India, is excused if the delay has been due either directly or indirectly to circumstances arising out of the present War, or to the impracticability, owing to similar circumstances, of transmitting the bill to the place of payment with reasonabe safety." This was in force only for the period of the War and six months thereafter. To provide for all cases of delay caused by circumstances beyond the control of the holder, the present section 75-A *post* was added by the amending Act XXV of 1920.

What bills to be presented?

It is not every bill of exchange that requires to be presented for acceptance before payment. Bills payable on demand, or payable a certain number of days after date or any other event, or payable on a day certain, need not be presented at all for acceptance before presentment for payment, though there is nothing to prevent such bills being presented for acceptance. (*a*) It is, however, advisable in all cases, to endeavour to get the bill accepted, as by acceptance, the liability of the drawee also is secured on the bill, and thus the bill becomes more easily negotiable. Such an acceptance is for the benefit of the drawer, for, by receiving early notice of dishonour, if the bill should be refused acceptance, he may get back any of his effects left with the drawee for meeting the bill drawn on him. Moreover, the holder too gains an advantage, for, in case of refusal of acceptance, such refusal is tantamount to refusal to pay, and the bill thus becomes dishonoured by non-payment; (*b*) and the holder then secures the immediate liability of all previous parties, and is further relieved from presenting again for payment. (*c*) The only case where a bill has to be presented for acceptance arises where it is payable a certain number of days after acceptance, or after sight. The presentment for acceptance, is absolutely necessary in the case of such bills, to fix the date of payment. Also, where a bill expressly stipulates that it shall be presented for acceptance, it must be presented for acceptance before it can be presented for payment. (*d*) Likewise, a bill may be drawn requiring payment without an acceptance. (*e*) This rule requiring presentment for acceptance has been applied to hundis also, in the absence of a contract to the con-

(*a*) *Veerappa* v. *Vellayan*, (1919) M. W.N. 780; *Ram Ravji* v. *Prahladdas*, 25 Bom. 133; *Nand Lal* v. *Firm Gulab Rai*, 71 I. C. 610 (Sindh); *Philpot* v. *Bryant*, (1827) 3 C. & P. 244.

(*b*) *Ibid.*

(*c*) See notes to sec. 30, *ante*; *Ramchurun* v. *Luchmeechund*, (1854) 9 Moo. P.C.C. 46, 65, 66; *Ballingalls* v. *Gloster*, (1803) 3 East. 481; *Whitehead* v. *Walker*, (1842) 9 M. & W. 506.

(*d*) *Cf.* B. of Ex. Act, sec. 39 (2).

(*e*) *R.* v. *Kinnear*, (1838) 2 Moo. & R. 117.

Sec. 61.

trary. (*a*) Presentment for acceptance must generally be before the bill is overdue; and an acceptance of an overdue bill is not illegal. But such acceptance does not preserve or revive the liability of the drawer or indorsers. (*b*)

Presentment by whom?

The bill should be presented for acceptance by a person entitled to demand acceptance. (*c*) He is generally the holder of the bill, and the drawee may presume a party in possession of an instrument to have the legal title to it, and accept the bill without any risk. If the person presenting turns out to be not a rightful holder, the drawee's acceptance will enure to the benefit of the person really entitled to the bill. By presenting the bill for acceptance, the holder does not guarantee that the bill or any documents attached thereto are genuine. (*d*) Presentment may be made by the holder personally or by an agent employed by him to procure acceptance.

To whom?

The presentment for acceptance must be made to the drawee, or a duly authorised agent of the drawee. (*e*) The demand for acceptance must be clear and unequivocal, and it is not sufficient to produce a witness who went to a place described as the drawee's house, and was there told by a person unknown to the witness that the drawee would not accept the bill. (*f*) There must be some proof given that the person to whom the presentment was made was the drawee himself, or some person employed by him in his business. It is said, that although in the case of presentment for payment it may suffice to demand payment at the residence of the acceptor, yet in the case of presentment for acceptance, the holder must endeavour to see the drawer personally. (*g*) The presentment does not consist in merely giving notice of the existence of a draft in the possession of the holder, but in actually exhibiting it to the person on whom it is drawn, so that he may see the same and judge whether he shall accept it or not. (*h*) The drawee may also insist on the production of the bill for acceptance, and may decline to accept, if it is not produced. The acceptor is also entitled to be allowed forty-eight hours, exclusive of public holidays, to consider whether he will accept the bill or not. (*i*)

To two or more drawees.

If a bill is drawn upon two or more persons, it must be presented

(*a*) *Nilkund Anantapa* v. *Menshi Apuraya*, 10 Bom. 346; *Shunmugam* v. *Chinnasami*, 14 Mad. 470.

(*b*) Chalmers. (10th Edn.) 162.

(*c*) As to whether presentment by agent is good, see notes to sec. 64.

(*d*) *Guaranty Trust Co. of New York* v. *Hannay*, (1918) 2 K. B. 623.

(*e*) Sec. 75 *post*.

(*f*) *Cheek* v. *Roper*, (1804) 5 Esp. 175.

(*g*) Chitty (11th Edn.) 195; *Bateman* v. *Joseph*, (1810) 12 East. 433; *Smith* v. *Bank of New South Wales*, (1872) L. R. 4 P. C. 194, 208.

(*h*) *Ram Singh* v. *Gulab*, 55 I. C. 610; Daniel, sec. 462..

(*i*) Sec. 63 *post*.

to all of them, unless one has authority to accept for all, in which case, presentment may be made to him, as in the case of a partnership. If it is not accepted by the first of them or any one of them, it is doubtful whether the holder should present the bill to the others also, before he can protest for non-acceptance. But it is to be noticed that the holder is entitled to have the acceptance of all the drawees, and if one of them refuses to accept, he may treat the bill as dishonoured. (*a*) If the drawee be dead, the holder is not bound to find out his legal representative and take his acceptance, for, according to section 75, it is left to his option to do so or not. If the drawee becomes insolvent, the bill may be presented to the Official Assignee or to the insolvent himself. (*b*)

Even though the drawer requests the drawee not to accept the bill if presented, the holder must yet present it for acceptance, in order to render the drawer liable; (*c*) nor will the fact that the holder knew, or had reason to believe that the drawee will refuse to accept, or that he has become insolvent, affect this rule. (*d*) But when once the acceptance has been refused and notice given to the parties, the holder is not bound to present the bill again, although the drawer requests him to do so and promises that the bill will be accepted. (*e*)

Where?

Though the presentment for acceptance should be made as far as possible to the drawee himself, the place of presentment is immaterial, for all he has to do is to take up the bill. Moreover, the day of presentment for acceptance may be uncertain, for the holder can present it on any day he pleases before the date of payment. But if the bill itself indicates a place of presentment, of course it must be made at that place; and if no place is named, the section does not mention where it is to be presented. As to presentment for payment, section 70 provides that it may be made either at the place of business, or at the usual residence of the drawee. Generally speaking, the demand for acceptance must be made at the residence or the place of business of the drawee, irrespective of the place mentioned in the bill as the place of payment. If the drawee has removed, the bill must be presented at his new place of abode, provided it can be ascertained after due diligence.

(*a*) *Cf.* B. of Ex. Act, sec. 41 (d); Daniel, sec. 455.

(*b*) Sec. 75, *post*; B. of Ex. Act, sec. 45.

(*c*) Cf. *Hill* v. *Heap*, (1823) Dow. & R. N. (P. C.) 57.

(*d*) Re *Agra Bank*, Ex-parte *Tondeur*, (1867) L. R. 5 Eq. 160, 165; In re *Barber & Co.*, (1870) L. R. 9 Eq. 732, 735; Cf. *Prideaux* v. *Collier*, (1817) 2 Stark, 57.

(*e*) *Hicking* v. *Hardley*, (1817) 7 Taunt 312.

Sec. 61.

In business hours.

According to the section, the bill must be presented for acceptance in business hours. The phrase " business hours " has not been defined in this Act, or in any other Indian Act. It will be regulated according to the custom and usage prevailing in the locality. Usual hours of business in India may be generally taken to be from 10 A.M. to 5 P.M., except on Saturdays, when the business is usually closed at 2 or 3 P.M. If these be the usual hours of business, the section cuts down the time allowed by the English law in this respect. In the Bills of Exchange Act, the words used are " reasonable hours," which phrase has been construed differently in the case of traders, bankers, and non-traders. In the case of trading people, it has been construed as indicating the usual hours of business ; (*a*) but in the case of non-traders, reasonable hours include hours up to bed-time. (*b*) But in India, this would not be the law under the section. Why such a departure is made in India in case of non-traders, it is difficult to understand.

On business day.

Presentment, again, must be on a business day, which is, however, not defined by this Act. It not only excludes public holidays, but also any day in which by custom or by proclamation, business is suspended.

Within reasonable time.

With respect to the time when a bill payable after sight should be presented for acceptance, it must be done without unreasonable delay, or the drawer and other persons liable on the bill will be discharged ; for, they have an interest in having the bill accepted immediately, in order to shorten the time of payment, and thus put a limit to the period of their liability. Further, there is the risk of the drawee becoming insolvent in the meanwhile. What is the reasonable time allowed to a person, is a question of fact to be determined, having regard to the nature of the instrument and the usual course of dealing with respect to similar instruments. (*c*) The holder of a bill payable after sight is not bound to transmit the bill for acceptance instantly, nor on the very day he receives the bill. (*d*) Thus, a delay to present, until the fourth day, a bill drawn on a person in London, given within 20 miles thereof, was held not to be unreasonable. (*e*) Similarly, considering the long distance between Gojra in Lyallpur District, the place where a hundi was drawn, and Karachi, the place of payment, a period of eleven days was held not to be an

---

(*a*) *Allen* v. *Edmundson*, (1848) 2 Ex. 719.

(*b*) *Wilkins* v. *Jadis* (1831) 2 B. & Ald. 188.

(*c*) *D'Sena* v. *T. M. Nair*, 31 Mad. 364 ; sec. 105, *post*.

(*d*) *Shute* v. *Robins*, (1828) 3 C. & P. 80.

(*e*) *Fry* v. *Hill*, (1817) 7 Taunt. 397.

unreasonable time for making the presentment for payment. (*a*) There is no fixed time when a bill or note payable after sight should be presented to the drawee, but all that is required is that it should be presented within a reasonable time. (*b*) In this respect, bills payable a certain number of days after date, differ from bills payable a certain number of days after sight ; " in the former case, the holder must present it at maturity, but in the latter case, he has a right to put the bill in circulation before he presents it, and then, of course, it is uncertain when it will be presented to the drawee. It is to the prejudice of the holder if he delays to do it, and he loses his money and interest."(*c*) Under the Bills of Exchange Act, (*d*) if a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time, and if he does not do so, the drawer and all the indorsers prior to that holder will be discharged. In considering the question of reasonable time, a larger latitude is allowed to the holder for presentment for acceptance, when the holder transfers the bill or puts it into circulation. So, bills payable after sight, drawn by county bankers on their correspondents in London, are commonly put into circulation and continue to be circulated before they are presented for acceptance in London. (*e*) Again, in the case of a foreign bill payable at three days' sight, where it was kept out of the way for nearly a year by means of circulation before it was presented, it was held there was no unreasonable delay. (*f*) But where a bill, drawn in Calcutta on Hong-Kong at sixty days after sight, was held up by circulation in India for over five months owing to the unfavourableness of the exchange, it was held that the delay discharged the drawer. (*g*) Bills were drawn on the 12th May by a house in London on a house in Lisbon, payable thirty days after sight, and indorsed to A in London. A indorsed them without any qualifications to B, at Paris. B, without presenting them for acceptance, put them in circulation, and on the 22nd August, they were presented at Lisbon for acceptance and dishonoured. In an action by B against A, it was held that B was justified in circulating the bills, and that it was at the option of the holder to present them for acceptance whenever he pleased. (*h*) If however, instead of putting the bill into circulation, the holder were to lock it up for a length of time, he would be guilty of *laches*. (*i*)

(*a*) *Mehta Bahadur Chand* v. *Ghulab*, 11 Lah. 34.

(*b*) *Ramchurn* v. *Luchmeechund*, (1854) 9 Moo. P. C. C. 46 ; *Mellish* v. *Rawdon*. (1832) 9 Bing. 416, 422.

(*c*) *Goupy* v. *Harden*, (1816) 7 Taunt. 159, per Gibbs. C. J.

(*d*) B. of Ex. Act, sec. 40.

(*e*) *Shute* v. *Robins*, (1828) 3 C. & P. 80.

(*f*) *Muilman* v. *D'Eguino*, (1795) 2 H. Bl. 565, per Buller. J.

(*g*) *Ramchurn* v. *Luchmeechund*, (1854) 9 Moo. P. C. C. 46.

(*h*) *Goupy* v. *Harden*, (1816) 7 Taunt. 159.

(*i*) *Muilman* v. *D'Eguino*, (1795) 2 H. Bl. 565.

Sec. 61.

Depends on facility of communication.

The facility of communication between the parties should also be considered in determining the question of reasonable time. (*a*) So, in a case where a bill was drawn in duplicate on the 12th August at Carbonear in Newfoundland, payable ninety days after sight, on S & Co. in England, for the freight of a voyage from Liverpool to Carbonear, the bill was not presented for acceptance until the 16th of November. Carbonear was 20 miles from St. John's, with a daily communication between those places; and from St. John's there was a post-office packet three times a week to England, the average voyage being about 18 days. It was held that the jury properly found the bill was not presented for acceptance within a reasonable time, no circumstances being proved in explanation of the delay. (*b*)

And the interest of the holder.

In determining the question of reasonable time, not only is the interest of the drawers and the indorsers to be looked to, but regard must be had also to the interest of the holder. The rising or falling of the rate of exchange at the place of residence of the drawee, is thus a material point in this connection. (*c*) "The interest of the holder is that he may be allowed to keep the bill until he can make a profit of it, or at all events save himself from loss. So long as the exchange remains steady, or at all events, if it rises after he has taken the bill, his interest does not materially clash with that of the drawer; and in such a case, the jury would probably think, with reference to the interest of both, that the reasonable time for sending the bill was satisfied by the allowance of a shorter and less extended period of time than if the interest of the holder and the drawer were in conflict and in competition with each other." Thus, if the exchange fell after the holder took the bill, a more extended period might fairly be allowed to the holder, at least to save himself from loss. But if it was found that there was no reasonable prospect of the state of things getting better in a short time, and that a low exchange was a permanent and regular course of the market, the holder would not be justified in keeping it any longer than was warranted by due diligence on his behalf. (*d*)

When presentment, excused?

Any reasonable cause, such as, sudden sickness or other inevitable accident may occasion delay in presentment, but after the cause of such delay ceases, the holder must use due diligence in presenting the bill. (*e*) Presentment for acceptance is also excused when the drawee

---

(*a*) *Mutty Lol* v. *Choge Mull*, 11 Cal. 344.

(*b*) *Straker* v. *Graham*, (1839) 4 M. & W. 721.

(*c*) *Mellish* v. *Rawdon*, (1832) 9 Bing. 416, 424, 425.

(*d*) *Mellish* v. *Rawdon*, (1832) 9 Bing. 416, 424, 425; *Ramchurn* v. *Luchmeechund*, (1854) 9 Moo. P. C. C. 46.

(*e*) See section 75-A *post*.

is a fictitious person, or one incapable of contracting, or if he cannot after reasonable search be found. Again, if presentment is made irregularly, such irregularity is excused when acceptance is refused on some other ground. If the instrument is transferred to the holder within so short a time of the maturity that presentment is impossible, it will be excused only as regards the liability of the party so transferring.

Presentment by post.

The last paragraph of the section was inserted by section 4 of Act II of 1885, in accordance with section 41, cl. (1) (e) of the Bills of Exchange Act, which gave effect to the recognised practice among English merchants of sending bills for presentment for acceptance by post. But the Indian Act has gone further and requires that when presentment is made by means of post, it must be made by a registered letter. It is a salutary rule, as it will make proof of presentment easier.

Presentment of promissory note for sight.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

NOTES.

Presentment for sight.

As already observed, notes payable at a certain period after sight must be presented for payment, in order to fix the maturity of the instrument. A note payable at a certain period after sight is payable at that period after presentment for sight. (*a*) The expression 'after sight' in a promissory note merely imports that the payment is not to be demanded until it has been again exhibited to the maker; (*b*) but the same expression in a bill of exchange means after acceptance or protest for non-acceptance and not after a mere private exhibition to the drawee, for the 'sight' must appear in a legal way. (*c*) Present-

(*a*) *Sturdy* v. *Henderson*, (1821) 4 B. & Ald. 592.

(*b*) *Dixon* v. *Nuttall*, (1834) 1 Cr. M. & R. 307; *Sturdy* v. *Henderson*, (1821) 4 B. & Ald. 592; *Sutton* v. *Toomer*, (1827) 7 B. & C. 416, 418.

(*c*) *Campbell* v. *French*, (1795) 6 T. R. 200, 212.

Sec. 63.

ment generally should be made to the maker of the note; and though section 75 does not provide as to whom presentment for sight should be made, it is submitted by way of analogy that a note may be presented for sight to the duly authorized agent of the maker, or where the maker is dead, to his legal representative, or when he has become insolvent, to his assignee. Until such presentment, there is no debt due, and no cause of action arises until presentment for sight has been made, and the time limited has elapsed. (*a*)

To whom?

In endeavouring to make presentment for sight, the holder must use all reasonable diligence to find out the maker of the note. If he cannot be found after a reasonable search, presentment will be excused under this section. As to what is reasonable search, see notes to section 76. The presentment under the section is for sight only, and there need be no writing or signature of the maker on the instrument to validate such a presentment. It is, however, advisable for the holder to get an acknowledgment of presentment by the maker, writing "seen" on the instrument, initialling, and dating the promissory note.

Again, presentment must be made within a reasonable time after the note is made, and in business hours, on a business day. (*b*) What is reasonable time is a question of fact depending on the circumstances of each case. The general provisions of section 105 as to reasonable time do not refer in terms to a presentment for sight. The rule laid down in that section may be taken to apply by way of analogy to this case also.

Effect of default.

According to the section, in default of presentment, no party to the instrument is liable to the defaulter, and strictly speaking, it may be said that such default does not affect the rights and liabilities of the other parties to the instrument. But it is submitted that the default of the holder will affect also the liabilities of other parties *inter se*, as these liabilities depend upon those of the maker to the holder.

Drawee's time for deliberation.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.

(*a*) *Holmes* v. *Kerrison*, (1810) 2 Taunt. 323.

(*b*) See notes to sec. 61 *ante*.

NOTES.

By section 2 of the Negotiable Instruments (Amendment) Act XII of 1921, 'forty-eight hours' were substituted in the section for 'twenty-four hours,' as the time allowed for acceptance was found to be too short, and caused considerable inconvenience and hardship.

48 hours' time to deliberate.

Under this section, time is allowed to the drawee to examine the accounts of the drawer and deliberate whether he will or will not accept the bill. Such time under the section is forty-eight hours, exclusive of public holidays. Under the Bills of Exchange Act, (*a*) the time allowed is the customary time, and the effect of such provision with regard to trade-bills seems to be this :—" If a bill, left for acceptance within business-hours one day, is not accepted before the close of business-hours on the next day, it must be noted for non-acceptance or otherwise treated as dishonoured." (*b*) The Indian law does not make any distinction between trade-bills and other bills, but fixes a definite period of forty-eight hours in all cases.

Excluding holidays.

In reckoning the period of forty-eight hours, public holidays are excluded, and this provision is probably based upon the case of *Bank of Van Diemen's Land* v. *Bank of Victoria.* (*c*)

Is holder to leave the bill?

In England, the bill need not be left with the drawee during the period of deliberation, but it is the practice to do so. Brooke says that it is a matter of courtesy. Though the section is silent on the point, it is suggested that the same practice will be followed even in India. (*d*) If the drawee with whom a bill is left for acceptance destroys it, or does not return the bill, the holder may maintain an action for the recovery of the bill, or for damages. (*e*) But the duty cast on the drawee is no more than to take due care of the bill, and if he did not choose to accept it, to return it un-cancelled. (*f*) If, therefore on account of the negligence of the holder, the bill is returned to a wrong person, the drawee is not liable. (*g*) Generally, it is the duty of the holder to call for the bill left for acceptance and inquire whether it has been accepted or not, (*h*) unless there is a course of dealing between the parties to the contrary. (*i*) The acceptance, if given, dates as from the day of presentation.

(*a*) B. of Ex. Act, sec. 42.
(*b*) Chalmers (10th Edn.) 164.
(*c*) (1871) L. R. 3 P. C. 526.
(*d*) Cf. *Bank of Van Diemen's Land* v. *Bank of Victoria,* (1871) L. R. 3 P. C. 526, 546.
(*e*) Chalmers (10th Edn.) 165.
(*f*) *Warwick* v. *Rogers,* (1843) 5 M. & G. 340.
(*g*) *Morrison* v. *Buchanan,* (1833) 6 C. & P. 18.
(*h*) *Jeune* v. *Ward,* (1818) 1 B. & Ald. 653, 659.
(*i*) *Harvey* v. *Martin,* (1808) 1 Camp. 425 (note).

Sec. 64.

As to the effect of the holder allowing the drawer more than forty-eight hours, see section 83.

Presentment for payment.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

*Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

NOTES.

Presentment for payment.

The section lays down the general rule that negotiable instruments should be presented for payment at maturity, (*a*) according to the rules contained in the succeeding sections. In default of such presentment, all the parties except the maker and the acceptor are discharged from their liability to the holder. (*b*) Section 65 points out the hours for presentment, and sections 66, 67 and 74 indicate the day or the date on which the instrument should be presented. Sections 68, 69, 70 and 71 lay down rules with regard to the place where it is to be presented. Sections 72 and 73 relate to cheques specially. Section 75 points out the person to whom presentment may be made. In section 76, exceptions are pointed out to the general rule in this section, when presentment is either not necessary, or is excused.

Liability of maker or acceptor, and of indorser.

There is a distinction between the liability of the maker and the acceptor, and that of the drawer and the indorser. The contract or

* This paragraph was added by section 4. of the Negotiable Instruments Act II of 1885.

(*a*) *Jhandu Lal* v. *Wilayati*, 47 All. 572, 573, (presentment before maturity, is bad).

(*b*) But see, *Oudh Commercial Bank* v. *Gurdin*, 59 I.C. 604.

engagement of the maker or acceptor is to pay the amount specified in the instrument upon due presentment of the instrument at its maturity, or when it becomes due, at the place designated thereon; while the engagement of the indorser or the drawer after acceptance is that, if upon such due presentment the amount is not paid by the maker or acceptor, he will pay the same upon demand, on due notice of dishonour being given to him. The liability of the maker or the acceptor is an absolute liability, while the liability of the indorser and the drawer is conditional. In the case of the drawer and the indorser, if presentment for payment is not made, they are discharged from liability, but the maker and the acceptor are not. This is plainly indicated by the words " the other parties thereto " in the section. So necessary is presentment, that it has been held, that it is the essence of the cause of action for the holder, and that the defence of want of presentment is not merely a statutory defence which the defendant could not plead in a county court without notice. (*a*) Time does not begin to run for the purpose of barring the right of action on the bill till presentment. (*b*) The mere fact of the holder having notice, before the bill or note becomes due, that it will not be paid up when presented on the due date, or a suspicion to that effect will not excuse the necessity for presentment. Not even the fact that the drawer has such notice and promised the holder that he will try to pay on such date, will excuse non-presentment to the acceptor. (*c*) Neither the receipt of money by the drawer from the acceptor to meet the bill, nor a declaration of the acceptor in the presence of the holder and the drawer that he cannot provide for the bill, dispenses with the necessity of presentment at maturity. (*d*) It has been held that countermand of payment by the drawer does not excuse non-presentment; (*e*) but Chitty doubts the accuracy of the report. (*f*) Neither bankruptcy nor death of the party dispenses with presentment under the section. (*g*) Even the loss of the bill or the note, does not excuse non-presentment. (*h*)

Presentment for payment necessary.

The presentment for payment must be such as would be sufficient to charge the indorsers and other persons collaterally liable on the bill, and the document itself must be presented so as to enable the

Presentment, how made?

(*a*) *Pritchard* v. *Couch*, (1913) 57 Sol. J. 342.

(*b*) Re *Boyse* (1886) 33 Ch. D. 612.

(*c*) *Prideaux* v. *Collier*, (1817) 2 Stark 57. (N. P.)

(*d*) *Baker* v. *Birch*, (1811) 3 Camp. 107 (N. P.)

(*e*) *Hill* v. *Heap*, (1823) D. & R. (N. P.) 57.

(*f*) Chitty (11th Edn.) 251.

(*g*) *Sands* v. *Clarke*, (1849) 19 L. J. C. P. 84; *Bowes* v. *Howe*, (1813) 5 Taunt. 30; *Esdaile* v. *Sowerby*, (1809) 11 East, 114, 117; *Chandi Ram* v. *Tej Bhan*, 72 I. C. 777; see sec. 76, *post*.

(*h*) *Udho Ram* v. *Hemraj*, (1924) Lah. 198.

Sec. 64. person presenting, to give it up if paid. The bill or note must be exhibited to the person from whom payment is demanded, and delivered forthwith to the party paid, for "the acceptor (or anybody) paying the bill," says Lord Tenterden, "has a right to the possession of the instrument for his own security and as his voucher and discharge *pro tanto* in his account with the drawer." (*a*) A mere registered notice by a pleader demanding payment is not a good presentment. (*b*) It is, however, not necessary that the presentor should carry the instrument in his hand at the time of the demand, provided the bill is in fact near and accessible, though not in his personal custody. In fact, it would seem that a demand otherwise valid will not be vitiated, simply because the note or bill is not exhibited, unless the maker or the acceptor should refuse to pay on that account. In all other cases he will be deemed to have waived his right to the note being exhibited. (*c*)

To whom? According to the section, notes should be presented for payment to the maker, and bills of exchange to the acceptor; while in the case of cheques, the section requires that the presentment should be made to the drawee-banker. The words 'maker, acceptor or drawee thereof respectively' seem a little inaccurate. The word 'drawee' refers only to cheques and not to bills, and there is no provision made in the section with reference to bills which do not require to be accepted before presentment for payment, such as, where the drawer and the drawee are the same person. (*d*) As to the other persons to whom a note, bill or cheque, may be presented for payment, see notes to section 75.

By whom? According to the section presentment should be made by, or on behalf of, the holder. The words used would bear the construction that a person who cannot give a valid discharge of the bill, note or cheque may present it for payment on behalf of the holder. The difference between the language employed in this section and in sections 61 and 62 ("entitled to demand payment") would also support this view. If that be the construction to be adopted, then the rule laid down in this section would be contrary to the law in England. The Bills of Exchange Act is explicit on the point, and it

(*a*) *Hansard* v. *Robinson*, (1827) 7 B. & C. 90; *Wright* v. *Maidstone*, (1855) 24 L. J. Ch. 623; *Crowe* v. *Clay*, (1854) 9 Ex. 604; *Ramuz* v. *Crowe*, (1847) 1 Ex. 167; *Griffin* v. *Weatherby*, (1868) L. R. 3 Q. B. 753; Cf. *Jones* v. *Broadhurst*, (1850) 9 C. B. 173; *Solomon* v. *Davis*, (1883) 1 Cab. & E. 83; *Duncan, Fox & Co.* v. *North & South Wales Bank*, (1880) 6 A. C. 1, 18; B. of Ex. Act, sec. 52 (4); *Ram Singh* v. *Gulab Rai*, 1 Lah. 262; Cf. *Udho Ram* v. *Hemraj*, (1924) Lah. 198.

(*b*) 38 M. L. J. (Sh. N.) 4.

(*c*) Parsons, Vol. I, 368.

(*d*) *Lachman* v. *Ramachandra*, 51 I. C. 859; see also sec. 17 *ante*.

says that presentment should be made by a person who is the holder, or some one authorized on his behalf. (*a*) The words in the Indian Act are susceptible of both the constructions, and the construction above indicated would expose the maker and the acceptor to serious risk, and hence should not be adopted. The holder or his duly authorized agent may present the instrument for payment. An agent, so employed and entrusted with a bill, is bound to use due diligence in presenting for acceptance, even when presentment is optional, and he is liable to his principal for damage due to his negligence. (*b*) Mere possession of an instrument without an indorsement in favour of the person, in cases of negotiable securities not payable to bearer, will not entitle such a person to present for, and demand, payment. An indorser, where indorsements subsequent to the one in his favour remain uncancelled, may present the bill for payment, as possession with him is *prima facie* evidence that he has paid up the subsequent parties. (*c*) If the holder be dead, presentment for payment may be made by his legal representative at once, or after appointment by court. In case of bankruptcy, the assignee may present the instrument for payment. (*d*)

Effect of default.

In default of presentment, the other parties on the instrument are discharged from their liabilities to the holder ; such other parties are the drawer and the indorsers in the case of bills and cheques, and the indorsers in the case of promissory notes. (*e*) Their liability being conditional upon due presentment of the instrument, such liability is discharged if the condition is not fulfilled. But when a hundi has been given to a creditor as a collateral security for a book-debt, and the creditor does not make use of it, he is not debarred from suing on the orginal cause of action. (*f*) Whether the presentment is necessary in order to charge the maker and the acceptor, is a somewhat difficult question to answer under the Indian Act, though the point is clear in English law. According to that law, the liability of the maker or acceptor is absolute, and so no presentment is necessary in order to charge them. (*g*) Under the Common Law, in the absence of a contract to the contrary, it is the duty of the debtor to seek the creditor and pay the debt. Except in the case of promissory notes payable at a specified place and bills of exchange payable at a specified place and not else-

(*a*) B. of Ex. Act, sec. 45 (3).

(*b*) *Bank of Van Diemen's Land* v. *Bank of Victoria*, (1871) L.R. 3 P. C. 526, 542.

(*c*) See *Subramanian* v. *Alagappa*, 30 Mad. 441 ; but see *Ghulam Mohiuddin* v. *Ram Ditta*, (1930) Lah. 248.

(*d*) Daniel, sec. 578.

(*e*) *Sagarmal* v. *Bhudan Sahu*, 19 I. C. 251.

(*f*) *Suraj Kumar* v. *Baldeo*, 18 I. C. 701.

(*g*) B. of Ex. Act, secs. 52 (1) and 87 (1).

Sec. 64. where, the note or the bill need not be presented at all in order to charge the maker or acceptor; and even in this exceptional case, the bill or note need not necessarily be presented on the due date. Under the Indian Act, the point is not free from difficulty. The framing of an exception to section 64, and the general wording of sections 66 and 74 would rather show that the rule in India is contrary to that in England. But the exception to section 64 provides only for a special case, and section 66 is not decisive or at best is only ambiguous. The omission in section 74 of a clause pointing out the consequence of non-presentment as in sections 61, 62 and 64 would show that a contrary rule was not intended to be laid down by the Indian Legislature, and this construction is accepted by the Courts in India. (*a*) Besides, the words used here are " the other parties ", that is, parties other than those mentioned in the section.

If the holder neglects to present the instrument according to the provisions of the Act, he cannot sue the person who indorsed the instrument to him on the original consideration or on the grounds of failure of consideration; (*b*) but it is otherwise, when the bill is given only as a collateral security and there is no novation. (*c*) It is only when the debtor is but secondarily liable as drawer or indorser that the debtor who delivers such bill or note for a debt will be discharged, if no due presentment is made; but this does not apply when the debtor is himself the principal party liable on the instrument, such as, a maker or an acceptor. (*d*) Though the section lays down that all the other parties are discharged from their liability to the holder, each prior party is also released with reference to each subsequent party, by the negligence of the holder, in the absence of a contract to the contrary.

Presentment by post.

The second clause of the section was newly added, (*e*) by which presentment through post office is made valid, when such mode is agreed on by the parties, or is in accordance with usage. (*f*) There is, however, one important safeguard in this provision which is not to be found even in the English Act, that is, that the presentment, if through post, should be by a registered letter.

(*a*) *Ramakistnayya* v. *Kassim*, 13 Mad. 172; *Phul Chand* v. *Ganga Ghulam*, 21 All. 450; *Ardeshir* v. *Khushaldas*, 32 Bom. 247, 253; *Ghaniyalal* v. *Karamchand*, 10 Lah. 755; *Jhandulal* v. *Wilayati*, 47 All. 572, 574; *Benares Bank* v. *Hormusji*, 52 All. 696; *Hemadri* v. *Seshamma*, (1930) M. W. N. 1232; but see *Oudh Commercial Bank* v. *Gur Din*, 59 I. C. 604; *Gaya Din* v. *Sri Ram*, 39 All. 364.

(*b*) *Camidge* v. *Allenby*, (1827) 6 B. & C. 373; *Peacock* v. *Pursell*, (1863) 32 L. J. C. P. 266; Addison on Contracts, 156.

(*c*) *Suraj Kumar* v. *Baldeo*, 18 I. C. 701.

(*d*) *Dargavarapu Sarrapu* v. *Rampratapu*, 25 Mad. 580.

(*e*) Act II of 1885, sec. 4.

(*f*) See B. of Ex. Act., sec. 45 (8).

Sec. 65.

The exception is really out of place, and its proper place is below section 74 which deals with negotiable instruments payable on demand; in fact, the exception is not really an exception to the general rule laid down in the section but is to be read really as an independent rule of law. (*a*) The rule laid down in the exception is in accordance with the English law. In the case of promissory notes payable on demand at a specified place, the note should be presented at that place in order to charge the maker thereof. (*b*) But if the note be not payable at a specified place, presentment of the note is not necessary, and even actual demand is not necessary to entitle the holder to sue on the note, (*c*) though his conduct in doing so may be visited with the costs of the action. (*d*) The date of demand is, however, necessary to determine the time from which to calculate interest. (*e*) Again, the period of limitation runs in such cases from the date of the note. (*f*)

Exception.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Hours for presentment.

NOTES.

This section is narrower than the corresponding provision in the Bills of Exchange Act. (*g*) In England, presentment for payment must be made within reasonable hours during the day. If presented at the place of business, then it must be within the hours in which such place of business is kept open according to the custom or usage of the place; and if presented at the place of residence, it must be within reasonable hours, so that the maker or the acceptor is up and may be presumed ready to transact business. Thus, it has been held in England that presentment at a counting-house between six and seven o'clock in the evening, (*h*) or at eight, in the house of a private merchant in London, (*i*) or, at the same hour at the office of an

Time of presentment.

(*a*) *Benares Bank* v. *Hormusji*, 52 All. 696.

(*b*) See sec. 69 *post*; *Jagannath* v. *Devanchand*, (1931) Lah. 758; In re *George, Francis* v. *Bruce*, (1890) 44 Ch. D. 627; see also *Edwards* v. *Walters*, (1896) 2 Ch. 157; *Norton* v. *Ellam*, (1837) 2 M. and W. 461; *Rowe* v. *Young*, 1820 4 E. R. 372. Addison on Contracts, p. 208. If alternative places are specified, presentment at either will do, Chalmers (10th Edn.) 171.

(*c*) *Ghaniya Lal* v. *Karam Chand*, 10 Lah. 755; *Mackintosh* v. *Haydon*, (1826) Ry. and M. 362.

(*d*) *Ghaniya Lal* v. *Karam Chand*, 10 Lah. 755.

(*e*) *Pierce* v. *Fothergill*, (1835) 2 Bing. N. C. 167.

(*f*) *Secy. of State* v. *Radhika*, 46 Mad. 259.

(*g*) B. of Ex. Act, sec. 45 (3).

(*h*) *Morgan* v. *Davison*, (1815) 1 Stark 114. (N. P.)

(*i*) *Barclay* v. *Bailey*, (1810) 2 Camp. 527. (N. P.)

Sec. 65.

attorney, (*a*) or shortly after 3 P.M. at a bank (*b*) was sufficient. Again, in a case (*c*) where a bill made payable at a house in London, was presented for payment at eight o'clock in the evening of the day when it became due, Lord Tenterden, C. J. said: "A presentment at twelve o'clock at night when a person has retired to rest would be unreasonble; but I cannot say that presentment between seven and eight in the evening is not presentment at a reasonable time."

Presentment in business hours.

But under the Indian law, it is required, in all cases, that the presentment should be made during the usual hours of business, presumably, the hours of business of the maker or acceptor. Reading these words with sections 70 and 71, it follows that even though the presentment be made at the residence of the party, or wherever he may be found, the presentment should still be within the period of usual hours of business. What the usual hours of business are in the case of a non-trader is not clear, nor is it clear why in the case of a non-trader, presentment within the usual hours of business is insisted upon. In India, the usual hours of business are from 10 A.M. to 5 P.M., except on Saturdays when the hours are generally from 10 A.M. to 3 P.M.; these hours are subject to variation according to the place, or the custom or usage of trade in the place where the instrument is payable and presentment is to be made. If there is a known custom or usage in the place, that will furnish a proper rule for the guidance of the holder, and in such a case, presentment must be within the hours limited by such custom or usage. It may be argued that the Indian Legislature borrowed the term "business hours" from the text-writers, and no departure was really intended to be made by it, especially as no reasonable motive can be alleged for such departure. Again, the word "usual" is added to "hours of business" in this section, which is not found in sections 61 and 62. Therefore, a presentment made during unusual hours of business, though valid for purposes of acceptance and sight, is not valid for purposes of payment.

At bank within banking hours.

As to bankers, it is established with reference to a well-known rule of trade, that a presentment out of the hours of (banking) business is not sufficient. (*d*) If then, a bill or note is made payable at a bank or banker's, it should be presented at the bank or the banker's place of business during the hours limited by the custom of the place, to the transactions of banking business. For, if a party chooses to take a special acceptance, such as, payable at the banker's, it is to be

(*a*) *Triggs* v. *Newnham*, (1825) 1 C. & P. 631.

(*b*) *Baines* v. *National Provincial Bank*, (1927) 96 L. J. K. B. 801.

(*c*) *Wilkins* v. *Jadis*, (1831) 2 B. & Ad. 188.

(*d*) *Ibid.*

presumed that he will inform himself of the proper time for receiving payment at such place, and he must apply accordingly, *i.e.*, according to the known method of conducting the banking business ; otherwise the greatest inconveniences to trade would follow, and no person would be safe in lodging money at a banker's for the purpose of answering bills made payable there. (*a*) A presentment at a banking-house after banking hours when the house is shut up, is not sufficient to charge the drawer ; and a banker is not bound to pay after banking hours, a bill which is accepted payable at his house. (*b*) It has however been held that the bank is entitled to deal with the cheque within a reasonable margin after their advertised time of closing. Accordingly, where a cheque is issued by the drawer at such an hour that it is impossible for the payee to present it for payment before 3 P.M., the closing hour that day, but he did in fact present it shortly after 3 and received payment, and where the drawer wanted to stop payment and communicated the same at the opening hour the next day, it was held in a suit by him against the Bank for the amount, that he could not succeed, as in cashing the cheque in this case the defendant bank was acting within its rights. (*c*) What are banking hours must be proved in each particular case, and will depend on the known custom and usage of the trade, town or city, where the instrument is made payable. As a general rule in India, it may be said that the usual hours for payment of money in banks are from 10 A.M. to 3 P.M., except on Saturdays when the hours are from 10 A.M. to 1 P.M. (*d*) But it has been held that presentment of bill after the usual hours of business is sufficient, provided there is somebody at the place who sees the bill, or gives an answer, or payment is refused on some ground other than the unusual hours of presentment. (*e*) Whether these cases apply under the Bills of Exchange Act of England, section 45, cl. 3, or under the present section is a doubtful point.

The consequences of non-presentment in accordance with this section are provided for by section 64. If the presentment is made at an unusual hour of business, *i.e.*, either too early or too late at a bank or the banker's, the presentment will be deemed a mere nullity and of no legal effect, and the holder must bear the consequences of his negligence, that is to say, the indorsers and the other parties to the bill will be discharged from all liability to such holder.

(*a*) *Parker* v. *Gordon*, (1806) 7 East, 385, 388.

(*b*) *Whitaker* v. *Bank of England*, (1835) 6 C. and P. 700; *Elford* v. *Teed*, (1813) 1 M. and S. 28.

(*c*) *Baines* v. *National Provincial Bank*, (1927) 96 L. J. K. B. 801.

(*d*) Stokes, Anglo-Indian Codes, Vol. I., p. 695.

(*e*) *Henry* v. *Lee*, (1814) 2 Chitty 124; *Garnett* v. *Woodcock*, (1817) 6 M. & S. 44.

Sec. 66.

Presentment for payment of instrument payable after date or sight.

66. A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

NOTES.

Presentment of bills after date or sight.

It is not clear why the rule stated in this section should be restricted to bills and notes payable at a specified period after date or sight. It is submitted that the rule will apply to all bills and notes payable otherwise than on demand, and they must be presented for payment at maturity. (*a*) As to the calculation of maturity, days of grace and public holidays, see notes to sections 22 to 25. A bill of exchange made payable at a specified period after date must be presented for payment at maturity, and the want of presentment exempts the indorser. (*b*) Bills and notes when payable at a time certain, must be presented on the very day they fall due, and presentment before that date is premature, and wholly inoperative. (*c*) Delay in presenting the instrument even for one day after it reaches maturity, will discharge all the parties not primarily liable, such as, the drawer and the indorsers. (*d*) The reason of the rule seems to be to prevent any loss resulting to the security of drawers and indorsers, by the holder taking his own time to make any demand for payment, and it is also intended by this rule to introduce promptness and exactness in the demand of payment, and to discourage *laches* on the part of the holder. In respect of the maker of a note or the acceptor of a bill of exchange, *i.e.*, the party primarily liable and the absolute debtor of the respective instruments, the holder may allow himself any delay he pleases short of the period of limitation; but as to the indorsers and the drawer who are only collaterally and conditionally liable, the rule is different. It is to charge them that demand of payment is necessary on the due date, and unless the demand be so made, it is generally a fatal objection to any right of recovery against them. Though in the present section, no distinction has been made between the case of the drawer or indorser and the case of a maker or acceptor, yet reading this section with section 64, and further, considering the fact that this distinction is a well-known one in English law, (*e*) it is to be presumed that the Legislature did

To charge drawer or indorsers.

Not necessary to charge maker or acceptor.

(*a*) B. of Ex. Act, sec. 45 (1).

(*b*) *Benares Bank* v. *Pirya Das*, (1930) All. 106.

(*c*) See *Jhandu Lal* v. *Wilayati*, 47 All. 572; *Wiffen* v. *Roberts*, (1795) 1 Esp. 261.

(*d*) *Benares Bank* v. *Pirya Das*, (1930) All. 106.

(*e*) *Ramchurn* v. *Luchmeechand*, (1854) 9 Moo. P. C. C. 46, 70; *Smith* v. *Vertue*, (1860) 30 L. J. C. P. 56, 59; *Cf.* B. of Ex. Act, sec. 52 (2).

not intend to lay down any principle different from that obtaining in England, and it has been so held in Courts in British India. (*a*)

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment of such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of promissory note payable by instalments.

NOTES.

For promissory notes made payable by instalments, three days of grace are allowed for each instalment. (*b*) The dates of the instalments, however, must be clear from the instrument itself; otherwise the instrument will not be valid as a note. (*c*) Presentment of such instruments for payment has therefore to be made as each instalment falls due, allowing of course three days of grace.

Days of grace for each instalment.

It is not clear whether a default made in presenting a note when the first instalment falls due discharges the indorser altogether or only for that instalment; nor is it clear whether presentment is necessary in the case of each instalment, even though there has already been a default in the payment of some instalments. Again, it is doubtful whether a fresh notice of dishonour is necessary on each default. These points have not been settled by text-writers, and Daniel seems to suggest that a promissory note made payable by instalments is in fact so many promissory notes for the several instalments payable at the times stated. If this be so, then default in payment of one instalment cannot discharge the whole note, but only the instalment of which there has a been default. This perhaps is supported by the last words of the section which says "as non-payment of *a* note at maturity" and not "*the* note at maturity." It would probably be different if there was a clause annexed in the note that, upon failure to meet any instalment, the whole shall become payable. In such a case, the indorser has been made liable for the whole amount due, presumably, on a notice given that there had been a default in payment of an instalment, that the whole sum was due and that the holder looked to him for payment. (*d*) Byles has suggested a

(*a*) See notes to sec. 64 *ante*.
(*b*) *Oridge* v. *Sherborne*, (1843) 11 M. & W. 374.
(*c*) *Moffatt* v. *Edwards*, (1841) Car. & M. 16.
(*d*) *Carlon* v. *Kenealy*, (1843) 12 M. & W. 139.

Sec. 68.

further difficulty, that is, whether in the case of promissory notes payable by instalments with a condition that in default of payment of one instalment the whole shall become due, three more days of grace should be allowed or not before claiming the whole sum. (*a*) From the fact that it has been held that, where a note is payable by instalments with a proviso that on failure of payment of any one instalment the whole shall become due, interest is to be calculated on the whole sum remaining unpaid and not on the respective instalments at the respective times when they would become payable, (*b*) it is clear that no such allowance need be made.

Presentment for payment of instrument payable at specified place and not elsewhere.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

NOTES.

Place of presentment.

This section and the following three sections indicate the proper place at which presentment for payment must be made. While this section deals with all kinds of instruments, section 69 deals with only notes and bills made, drawn or accepted, payable at a specified place, and section 70 provides for the rest of the cases. Section 71 deals with the case of a person to whom presentment must be made but who has no place of business. This chapter on presentment is well analysed in *Benares Bank* v. *Hormusji.* (*c*) The result of the sections may be stated thus : where in an instrument the place of payment is indicated by the maker, drawer or acceptor, it must be presented at that place for payment. If no such place is stated, the note or the bill must be presented at the place of business, if any, or at the usual residence of the maker, drawee or acceptor as the case may be. If he has no known place of business or fixed residence, presentment may be made to the person wherever he can be found. As to cheques, special provisions are made under sections 72 and 73.

This section reproduces the English law as it stands at present, under which an acceptance to pay at a particular place is only a general acceptance, unless it expressly states that the bill is to be paid

(*a*) Byles (19th Edn.) 206 note (n).
(*b*) *Blake* v. *Lawrence*, (1802) 4 Esp. 147.
(*c*) 52 All. 696.

there only and not elsewhere. In the latter case, the acceptance is qualified, and presentment is necessary at the place mentioned ; otherwise, all parties to the bill are discharged. (*a*) This will include the acceptor also, as this section speaks of presentment, as a condition-precedent to charge *any* party to the instrument, whereas section 64 speaks only with reference to *other* parties. In this respect, the acceptor's position is for many purposes analogous to that of the drawee of a cheque. (*b*) Though presentment for payment is required at the place named in order to charge the acceptor, he is not, however, discharged from liability by the holder's omission to present the instrument on the very day it falls due, for, this section must be read with section 64, *ante*. (*c*) It is not clear why there should be any mention of cheques in this section as by the very definition of the word 'cheque,' it is obvious that it must be presented at the banker's on whom it is drawn. The provision is inserted perhaps to meet cases where cheques are drawn on a banker, payable at a place other than that where he transacts his banking business.

For the application of this section, the mention of the place of payment may be made either by the drawer or the maker (*d*) at the time the instrument is originally made, or may be made by the acceptor as a part of his acceptance on the bill. (*e*)

Instrument payable at specified place.

69. A promissory note or bill of exchange, made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

NOTES.

Presentment at the specified place.

This section provides for the necessity of presentment of a bill or note made payable at a specified place. In such cases, presentment is necessary at the place mentioned, to charge the drawer or the maker. (*f*) If a particular place is pointed out in a bill as the acceptor's residence, a presentment to any inmate, (*g*) or if the house

(*a*) B. of Ex. Act, secs. 19 (c) and 87 ; *Halstead* v. *Skelton*, (1843) 5 Q. B. 86, 92, 94.

(*b*) *Bishop* v. *Chitty*, (1742) 2 Stra. 1195 ; *Ramchurn* v. *Luchmeechund*, (1854) 9 Moo. P. C. C. 46, 70.

(*c*) See B. of Ex. Act, sec. 52 (2) ; Cf. *Ghaniya Lal* v. *Karamchand*, 10 Lah. 755.

(*d*) *Gibb* v. *Mather*, (1832) 2 Cr. & J. 254.

(*e*) *Saul* v. *Jones*, (1858) 28 L. J. Q. B. 37.

(*f*) *Spindler* v. *Grellett*, (1847) 1 Ex. 384 ; *Sands* v. *Clarke*, (1849) 19 L. J. C. P. 84.

(*g*) *Buxton* v. *Jones*, (1840) 1 M. & G. 83.

Sec. 69.

be shut up, at the door, will suffice. (*a*) Why the case of the indorser of a bill or note or cheque is not provided for in this section is not clear; but since *laches* which discharge prior parties to a bill or note affect the right of the subsequent parties also, the discharge of the drawer or the maker, by want of due presentment in accordance with this section, will discharge the indorsers also who stand in the relation of sureties. (*b*)

The case of an acceptor stands on a different footing. He is the original debtor, and not a surety. The only consequence of the neglect of the holder would perhaps be that by proving that the acceptor was ready at the time and place to make the payment, he would be relieved from paying any damage or costs. This reasoning will equally apply to the case of a maker, and it has been held so in America; (*c*) but, however, the section, following the English law on the subject, has enacted that to charge the maker of a promissory note, it is necessary that presentment ought to be made at the place specified. (*d*) Under section 87 of the Bills of Exchange Act, it is provided that the place at which the note is made payable should be mentioned in the body of the instrument, and if the place is mentioned by way of a memorandum beneath the maker's signature, (*e*) or in a corner of the note (*f*) or is written across the note, (*g*) it would be regarded as directory only, and the holder can sue the maker in such cases without making the presentment. The words 'in the body of the note' have been held to mean, in the terms of the actual contract to pay contained in the note and as a part thereof. (*h*) The English Act further enacts that presentment is necessary at the place mentioned in the body of the instrument to charge the indorsers; (*i*) but when the place of payment is not specified in the body, presentment at the place indicated in the memorandum, or any other presentment otherwise sufficient, is enough. (*j*)

Eng. Law.

Under the Indian law, however, there is no warrant for such a distinction. The question will have to be decided according to the

Ind. Law.

(*a*) *Hine* v. *Allely*, (1833) 4 B. & Ad. 624.

(*b*) Cf. *Roche* v. *Campbell*, (1812) 3 Camp. 247.

(*c*) Daniel, sec. 643.

(*d*) *Ghaniya* v. *Karam*, 10 Lah. 755; *Jagannath* v. *Devanchand*, (1931) Lah. 758; see exception to section 64 *ante*.

(*e*) *Saunderson* v. *Bowes*, (1811) 14 East 500; *Williams* v. *Waring*, (1829) 10 B. & C. 2.

(*f*) *Price* v. *Mitchell*, (1815) 4 Camp. 200.

(*g*) *Stevenson* v. *Brown*, (1902) 18 T. L. R. 268.

(*h*) *British Trade Corporation* In re, (1932) 2 Ch. 1; Cf. *Josolyne* v. *Roberts*, (1908) 2 K. B. 349.

(*i*) *Gibb* v. *Mather*, (1832) 8 Bing. 214, 220; *Saul* v. *Jones*, (1858) 28 L. J. Q. B. 37; *Beirnstein* v. *Usher, & Co.*, (1895) 11 T. L. R. 356; B. of Ex. Act, sec. 87 (2).

(*j*) B. of Ex. Act, sec. 87 (3); *Saunderson* v. *Judge*, (1795) 2 H. Bl. 509, 510; *Masters* v. *Baretto*, (1849) 8 C. B. 433.

intention to be gathered from the instrument. *Prima facie*, a separate memorandum or even a marginal note in the instrument specifying the place is not a part of the original contract, and so cannot control the operation of it.

Where a promissory note is made payable at either of two places, presentment at either of these places will suffice, though it is proved, that had it been presented at the nearer of the two places, it would have been paid. (*a*) The same rule is applicable to bills of exchange also. A bill may therefore state an alternative place of payment at holder's option, and where a bill is made payable elsewhere than at the residence or place of business of the drawee, the bill is said to be domiciled where payable. (*b*) A promissory note mentioned "Madras or any other place where you (the creditor) have your shop" as the place of payment, and it was held that presentment must be made at one or other of these places; and the argument that the word 'place' in sections 68 and 69 ought not to be read as meaning 'places' was over-ruled. (*c*)

Presentment where no exclusive place specified.

70. A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

NOTES.

Presentment at business place or residence.

This section provides for cases where no place of payment is specified in the instrument itself. In that case, the presentment must be made at the place of business of the acceptor or the maker or the place where he has his home or residence. Where no place of payment is mentioned, but the address of the drawee is given, the instrument may be presented there. (*d*) Whether the holder has any such option, where the maker or acceptor has both a dwelling-house and a business-house in the same place, is not clear from the section, though the corresponding provision in the English Act is explicit on the point. (*e*) Presumably he has no such option, for, it is always more appropriate to expect the maker or the acceptor at the place of

(*a*) *Beeching* v. *Gower*, (1816) Holt. (N. P.) 313; *Pollard* v. *Herries*, (1803) 3 B. & P. 335; Daniel, sec. 648.

(*b*) *Speyer Bros.* v. *Inland Revenue*, (1907) 1 K. B. 246 (C. A.), affirmed in (1908) A. C. 92.

(*c*) *Chegganmull* v. *Desur Manicka*, 50 M. L. J. 242, 250.

(*d*) *Buxton* v. *Jones*, (1840) 1 M. & G. 83.

(*e*) B. of Ex. Act, sec. 45 (4).

Sec. 71.

business where he is accustomed to transact business, and quite unreasonable to find any one in his private residence during the business hours of the day, to answer the demand of the holder for payment. The words "if any" would seem to suggest that the operation of the second clause begins only when there is no place of business. That is, in case of non-traders, presentment is to be made at their usual residence. (*a*)

The place of business mentioned in the section is the usual place of business of the party, and not that used for mere temporary occupation. If the place of business is closed or abandoned, and there is some other place where his business is conducted which can be ascertained from reasonable inquiries, presentment at the former place of business will not be sufficient. (*b*)

Presentment when maker, &c., has no known place of business or residence.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

NOTES.

Presentment in person.

This section corresponds to section 45 (4), cl. (d) of the English Act, and provides for cases where the holder does not know the place of business, or the fixed residence of the maker or acceptor. This, of course, does not absolve the holder from making due and diligent inquiries, as to the place of business or the residence. If, on such inquiries, the holder is unable to find either the place of business or the residence, presentment may be made under the authority of this section personally, wherever he may be found, (*c*) and this is the only case where presentment in person is mentioned in the Act. Where presentment is made to the maker or acceptor personally, the place where it is made is unimportant. A presentment in the street where the party was found, or in a barn-yard would be sufficient; (*d*) under such circumstances, if the maker or the acceptor does not object to such demand or if he has no place of business or residence, then the case is simple. But complications arise if the maker or acceptor has a place of business or residence, which the holder could not find after

Where?

(*a*) Stokes, Anglo-Indian Codes, Vol. 1. 696; *Cf.* Sec. 94, *post.*

(*b*) Daniel, sec. 637.

(*c*) *Crosse* v. *Smith*, (1813) 1 M. & S. 545.

(*d*) Daniel, sec. 638.

due inquiry, and if the maker, drawee or acceptor objects to the demand made on him outside his place of business or residence. In such a case if the party gives the address, is the holder bound to present again at the place of business or residence?

Sec. 72.

Presentment of cheque to charge drawer.

* **72.** Subject to the provisions of section 84, a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

NOTES.

Presentment of cheques.

Cheques, like other bills of exchange, have to be presented for payment to the bank on which they are drawn, and only on such presentment and refusal by the bank, does any recourse to the drawer arise in favour of the holder. Generally, cheques are drawn on deposited funds in the bank, and that makes it all the more necessary for the cheque to be presented at its due date.

Drawer of bill and cheque: distinction.

There is one important distinction between the case of a drawer of a bill of exchange and the drawer of a cheque, which may be mentioned here. In the case of the ordinary bills of exchange, negligence in respect of presentment, absolutely discharges the drawer, whereas the drawer of a cheque is discharged only if he has suffered some loss or injury, and then too to the extent of such loss only. (*a*) So, if the bank on which the cheque is drawn, remains solvent, the drawer will remain bound after presentment and refusal, although months and years (short of the period of limitation) have elapsed since the drawing; (*b*) but in the case of a bill of exchange payable on demand, presentment must be made within a reasonable time after it is received by the holder in order to charge the drawer. However, it is to the interest of the holder to make the presentment as early as possible; for, if before presentment the bank fails, the loss will not be that of the drawer, but will fall upon the holder himself. This distinction between the liability of the drawer of a cheque and the liability of the drawer of a bill of exchange is based upon the fact that the liability of the drawer of a cheque is an absolute one,

* "Subject to the provisions of section 84,"—these words and figures were inserted by section 2 of the Negotiable Instruments Act (Amendment Act VI of 1897).

(*a*) Sec. 84 *post*. Cf. *Robinson* v. *Hawksford*, (1846) 9 Q. B. 52; *Laws* v. *Rand*, (1857) 3 C. B. N. S. 442; see *Hopkins* v. *Ware*, (1869) L. R. 4 Ex. 268.

(*b*) *King and Boyd* v. *Porter*, (1925) N I. (C. A.) 107, quoted in Halsbury Vol. II (2nd Edn.) p. 686.

Sec. 73.

while that of the drawer of a bill is only conditional. Again, though his liability is an absolute one, it is not, as will be seen, the same as the absolute liability of the acceptor of a bill or the maker of a note. The reason for this distinction can be stated thus: 'it will be a fraud on the part of the drawer of a cheque to withdraw from the banker any part of the sum set apart for the honouring of the cheque; and as he cannot rightfully withdraw the amount, it will be unjust to require that, however long the cheque-holder may permit the amount to remain at the banker's, it should be at the drawer's risk.' The words "subject to the provisions of section 84" were added by Act VI of 1897, so as to make it clear that the delay in presentment does not discharge the drawer completely, but only to the extent of the amount which the drawer has lost in consequence of the delay.

Presentment of cheque to charge any other person.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

NOTES.

Presentment of cheque to charge indorser.

This section enacts the rule that in order to charge the indorser, the holder should present the cheque within a reasonable time after it is delivered by such indorser. If not so presented and there is considerable delay, it is regarded as 'stale.' It has been held, that a holder of a stale cheque cannot maintain a suit, though he took it *bona fide* and for consideration. (*a*) "In order to charge any person except the drawer" means, in order to charge the indorsers. The reasonable time, in order to fix the liability of the indorsers of a cheque is to be calculated from the time of delivery of the cheque by such indorser, and not from the time when the holder receives the cheque from any subsequent indorsers. In this respect a cheque differs from a bill, because, in the case of a bill, reasonable time is calculated from the time of the receipt of the bill by the holder. Though the holder can charge his immediate indorser for having presented the cheque within reasonable time from the date of its delivery by such indorser, he cannot charge the prior indorser, if reasonable time had elapsed since the delivery of the cheque by such prior indorser to his immediate indorsee. That is to say, no

'Stale cheque.'

Within reasonable time of indorsing.

(*a*) *Ram Sarup* v. *Hardeo*, 50 All. 309.

holder of a cheque can enlarge the period of the liability of any prior party, merely by putting the cheque in circulation; for, a cheque is generally intended for immediate payment, and not for circulation. The words "after delivery thereof by such person" in this section are significant with reference to this point. The Indian law follows the English law with reference to cheques, though it makes a distinction in the case of bills, for which, see notes to section 74.

Sec. 74.

As to reasonable time, see section 105, which is similar in terms to section 74, cl. (2) and section 45, cl. (2) of the Bills of Exchange Act.

74. Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment of instrument payable on demand.

NOTES.

Presentment of demand-bills and notes.

Though the section is wide enough to cover all kinds of negotiable instruments payable on demand, yet, in its operation, this section must be taken to apply only to bills and notes, payable on demand, as cheques have been specially provided for by sections 72 and 73. Such instruments are payable immediately on presentment, and so must be presented within a reasonable time after they are received by the holder. Such reasonable time is not an absolute one as in the case of cheques; (*a*) but it is enough in the case of bills and notes put into circulation, to present them within a reasonable time after they come into the hands of the last holder. In fact, to such instruments, the term 'maturity' such as is mentioned in section 22 *ante*, does not apply. (*b*) As to what is reasonable time, see notes to section 105.

Eng. Law.

Under the English law as enacted by the Bills of Exchange Act, section 45, cl. (2), the rule applicable to bills seems to be somewhat different, and approximates more to the rule applicable to cheques. It provides that the presentment must be made within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable. Even in the case of promissory notes, to charge the indorsers, presentment is necessary, and such presentment is to be made within a reasonable time after his indorsement and delivery; otherwise, the indorser is discharged. (*c*)

(*a*) See notes to sec. 73 *ante*.
(*b*) *Hemadri* v. *Seshamma*, (1931) Mad. 113.
(*c*) B. of Ex. Act, sec. 86 (1).

Sec. 75.

Ind. Law.

Under the Indian law, presentment by the last holder within a reasonable time after he receives the instrument, secures to him the liability of not only his immediate indorser, but also of all persons whose names appear on the instrument as parties.

In calculating the reasonable time, a distinction is made in England between promissory notes payable on demand and bills payable on demand. That distinction is based on the ground that a promissory note is regarded as a continuing security, and that very often the payee receives interest from the maker periodically. (*a*) That distinction seems to be, to some extent retained, even in the Act; for, reasonable time is made to depend, among other things, on the nature of the instrument. (*b*)

This section is said to be subject to the provisions of section 31, which deals with the relation of the drawee of a cheque with the drawer, and its connection with the present section is not easy to discover.

Presentment by or to agent, representative of deceased or assignee of insolvent.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

NOTES.

Presentment to whom?

The marginal note is wider than the section itself, for the section treats only of persons to whom presentment for acceptance or payment may be made. Such presentment may be made to the drawee, maker, or acceptor, as the case may be, or to an agent duly authorized. When the holder cannot find the drawee in person, he must assure himself that the person, to whom he presents the bill for acceptance or for payment, is his duly authorized agent. Whether a clerk found at the drawee's place of business is a competent party for the bill to be presented to, is not easy to answer. It has been held that a presentment of a bill payable at A. B. & Co. (bankers) to their clerks at the clearing house is sufficient. (*c*) If on inquiry at the place of

To agent.

(*a*) *Brooks* v. *Mitchell*, (1841) 9 M. & W. 15, 18; *Chartered Mercantile Bank* v. *Dickson*, (1871) L. R. 8 P. C. 574; see also *Shaha & Co.*, v. *Bengal National Bank*, 47 Cal. 861.

(*b*) Sec. 105, *post*.

(*c*) *Reynolds* v. *Chettle*, (1811) 2 Camp 595.

business, there is some person to answer the call of the holder for acceptance or payment, then the holder may fairly assume that such person is duly authorized by the drawer to give the answer given to him. In such a case, the burden will be upon the drawee who disputes the propriety of presentment to show that the person was not his agent. Thus, where a bill was presented to the wife of the drawee who was then abroad, (*a*) or to an agent at the place of business, (*b*) such presentment has been held to be good, though a demand on a servant of the house is not. (*c*) But if the person in the place of business is unable to answer satisfactorily, it will be the duty of the holder to make reasonable search to find out the drawee or some other person duly authorized by him.

To legal representative.

If the drawee, acceptor or maker, as the case may be, is dead, then presentment for acceptance or payment may be made to his legal representative. (*d*) Under the English law, as enacted in the Bills of Exchange Act, a distinction is made between presentment for acceptance and presentment for payment. When the drawee is dead, presentment for acceptance *may* be made to his personal representative; (*e*) but the presentment for payment *must* be made to his personal representative, (*f*) if there be one and he can be found with the exercise of reasonable diligence. If, however, a place of payment is specified in the instrument, presentment at that place is sufficient. If there be no personal representative, it seems presentment at the place named or at the dwelling-house of the deceased is sufficient. Under the Act, though it is at the option of the holder to present the instrument to the legal representative of the deceased, he is not on that account relieved from the liability of presenting it at all, for, the death of a person to whom presentment for payment is to be made is not one of the grounds for excusing non-presentment. It is submitted, that in such cases, if the holder does not choose to present the bill or note to the legal representative, or if such legal representative cannot be found after reasonable search, he must at least make a presentment at the dwelling-house of the deceased. (*g*)

Or at the place named or residence.

To assignee of bankrupt.

If the drawee, acceptor or maker becomes insolvent before presentment, presentment according to the section, may be made either to the party or to his assignee. This rule applies to presentment for acceptance and payment alike. In English Law, however, the rules appli-

(*a*) *Cromwell* v. *Hynson*, (1796) 2 Esp. 511.

(*b*) *Philips* v. *Astling*, (1809) 2 Taunt, 206.

(*c*) *Norfolk* v. *Howard*, (1682) 2 Show. 235.

(*d*) Cf. *Philpot* v. *Bryant*, (1828) 4 Bing. 717.

(*e*) B. of Ex. Act, sec. 41 (1) (c).

(*f*) B. of Ex. Act, sec. 45 (7); see *Caunt* v. *Thompson*, (1849) 7 C. B. 400.

(*g*) *Cf.* Daniel, sec. 591.

Sec. 75-A.

cable to the two cases are different. If for acceptance, the holder has got the option mentioned in the section ; (*a*) but if for payment, it seems presentment must be made to the bankrupt himself, though the Bills of Exchange Act is silent on the point. On the principles applicable to insolvency, it has been decided that where a company is being wound up, the demand for payment may be made on the liquidator. (*b*)

Excuse for delay in presentment for acceptance or payment.

* **75-A.** Delay in presentment † for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.

NOTES.

During the late War, the Indian Bills of Exchange Act XIV of 1916 and IX of 1917 made provision for delays in presentment on account of the war, but the Act was temporary and was to be in force only during the continuance of the war and for a period of six months thereafter. The permanent law on the subject in the Act, did not contain any provision for delays beyond the control of the holder. Hence, on the lines of section 46 (1) of the Bills of Exchange Act, the above section was added by the Amending Act XXV of 1920 so as to make provision for excusing delay in making presentment for payment, when the delay is caused by circumstances beyond the control of the holder. Then it was found desirable that the section should be extended in its scope so as to excuse delay in presentment for acceptance also, and by Act XII of 1921, this was carried out. In a Lahore case, where a Hundi was lost and the drawer refused to supply a duplicate, non-presentment was excused. (*c*) Causes which merely excuse the delay must be distinguished from causes which dispense with 'presentment' altogether. In the former case, presentment must be made within a reasonable time after the cause of the delay is removed. In

(*a*) B. of Ex. Act, secs. 41, cl. 1 (d) and 41, cl. 2 (a).

(*b*) Re *East of England Banking Co.*, (1868) 4 Ch. App. 14.

* This section was inserted by section 2 of the Negotiable Instruments (Amendment) Act (XXV of 1920).

† The words "for acceptance or for payment" were substituted for the words "for payment" by section 3 of the Negotiable Instruments (Amendment) Act (XII of 1921).

(*c*) *Udho Ram* v. *Hemraj*, (1924) Lah. 198.

the latter case, presentment is not necessary at all. This point is dealt with fully in the notes to the next section. The delay owing to war or political disturbances (*a*) or the passing of a law declaring moratorium (*b*) will be excused, as the delay is beyond the control of the holder. Otherwise, any delay for a short time, even if it be a day, will not be excused. (*c*)

Sec. 76.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

When presentment unnecessary.

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,

If the instrument not being payable at any specified place, he cannot after due search be found;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

(*a*) *Patience* v. *Townley*, (1805) 2 Smith (K.B.) 223.

(*b*) *Rouquette* v. *Overmann*, (1875) L. R. 10 Q. B. 525; In re *Francke and Rasch*, (1918) 1 Ch. 470.

(*c*) *Anderton* v. *Beck*, (1812) 16 East, 248.

Sec. 76.

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

NOTES.

Presentment excused.

This section contains exceptions to section 64 *ante*, and enumerates grounds which will constitute a sufficient excuse for non-presentment at the time and place where the instrument is due and payable. The excuses for non-presentment are in many cases same as or similar to the excuses for dispensing with notice of dishonour. Therefore, the cases under section 98 are also relevant under this section. Presentment for payment is made to the maker, or the drawee or the acceptor, as the case may be. So, if such party intentionally prevents the presentment, then non-presentment is excused. By the use of the word "prevent" in the section, it would seem that some active action on the part of the maker, the drawee, or the acceptor is implied. Thus, where such party puts any obstacle in the way of the holder making presentment, or disables him from doing so, by getting hold of the instrument and keeping it till after maturity, or by purposely misleading the holder so as to make it impossible for him to present the instrument at the due date or by refusing to supply a duplicate bill when the original was lost, (*a*) such conduct excuses the holder from making the presentment. (*b*) Again, if the place of business at which the instrument is payable is closed during business hours, on a business day, presentment is not necessary ; for, the party liable to pay, is bound to have a suitable person at his place of business to answer enquiries, and to pay his bills and notes, if demanded.

1. When prevented.

2. When business place closed.

Though under section 70, presentment may be made either at the place of business or at the residence of the maker, non-presentment is

(*a*) *Udho Ram* v. *Hemraj*, (1924) Lah. 198.
(*b*) *Cf.* Daniel, sec. 1105.

excused only if the place of business is closed. When a person closes his business place, it will be presumed that it has been done intentionally to avoid payment, and no further inquiries need be made to effect a presentment in order to charge either the drawer or the indorsers. So, if the maker of a note shuts up and abandons his shop, that is evidence of a declaration to all the world of his refusal to pay his note there. The same rule is applicable if the instrument is payable at a specified place, and on presentment there, no person authorized to pay or refuse payment can be found; (*a*) accordingly, in an action on a bill drawn upon "P. P. No. 6 Budge Row" where it was proved that the holder went to the house specified, but found it shut up and no one there, it was held that it was a good presentment. (*b*) Similarly, it has been held that where a hundi was expressly payable at the Alliance Bank of Simla, and on the due date, neither the acceptor nor any body on his behalf attended there during the usual hours of business, the fact of non-presentment did not non-suit the plaintiff. (*c*) In all the cases, however, it appears to be necessary that the holder should go to the place of payment and attempt to make a due presentment, though in the Lahore case above-mentioned, no attempt at presentment seems to have been made at all. A mere declaration of readiness and willingness to make the presentment in due manner, without more, will not be sufficient. In an action by a payee against the maker of a note 'payable at No. 11, Oldship', a declaration of his readiness and willingness to present the note but for the fact that the maker was absent and not to be found there and had secretly absconded from the place, was no sufficient legal excuse for non-presentment at the specified place. (*d*) The mere fact that the holder has reason to believe that the bill will not, on presentment, be paid up, (*e*) or that the drawer has informed the drawee not to pay, (*f*) or that the maker of a note has become an insolvent, (*g*) or that the company has gone into liquidation, (*h*) will not relieve the holder from his obligation to make due presentment. But it was held, that if a banking firm had notoriously stopped payment and shut up its place of business, the holder might be entitled to recover on

Or no person at place of payment.

(*a*) *Howe* v. *Bowes*, (1812) 16 East. 112.

(*b*) *Hine* v. *Allely*, (1833) 4 B. & Ad. 624; see *Wilkins* v. *Jadis*, (1831) 2 B. & Ad. 188.

(*c*) *Ram Singh* v. *Gulab Rai*, 1 Lah, 262, 272.

(*d*) *Sands* v. *Clarke*, (1849) 8 C. B. 751; *Spindler* v. *Grellett* (1847) 1 Ex. 384.

(*e*) *Baker* v. *Birch*, (1811) 3 Camp. 107; Ex parte *Bignold*, (1836) I Deac. 712.

(*f*) *Hill* v. *Heap*, (1823) D. & R. (N. P. C.) 57.

(*g*) *Sands* v. *Clarke*, (1849) 8 C. B. 751; *Russel* v. *Langstaffe*, (1780) 2 Doug. 514; *Warrington* v. *Furbor*, (1807) 8 East 242.

(*h*) In re *East of England Banking Co.*, (1868) L. R. 4 Ch. 14 on appeal from (1868) L. R. 6 Eq 368.

Sec. 76. immediate notice of dishonour without actual presentment. (*a*) Loss or destruction of the negotiable instrument does not dispense with the duty of the holder to present it for payment and on dishonour, give proper notice of dishonour. (*b*)

3. Or when cannot be found.

If there is no place of payment mentioned in the instrument, the holder is bound to make due search to find out the maker, drawee or acceptor, as the case may be, or his place of business or residence. If after due diligence, neither the maker, drawee, or acceptor, as the case may be, nor his usual place of business or residence can be found, presentment to him will of necessity be excused, and the parties to the bill or note will be held liable without it. The words used in the section are "due search" which are in effect the same as "reasonable search," mentioned in sections 61 and 62. What is due diligence is often a question of nicety, and one to be decided in each case as a question of fact. (*c*) As a general rule, it consists in making inquiries of persons who from their connection with the transaction on the instrument, place or parties, are likely to be informed, and acting in accordance with the information got from them. Such persons are usually the indorsers or the parties to the instrument when they can be found. (*d*)

'After due search.'

4. Or when waived.

Presentment of a bill or note at maturity may be dispensed with by a prior agreement between the parties, that is, it may be waived by the party entitled to require it. In that case, the holder is excused for his failure to make it. Where the payee of a cheque received it under an agreement that it shall not be presented for a week till certain negotiations were concluded, and in the meanwhile the bank on which it was drawn failed, it was held, that the drawer must bear the loss. (*e*) This waiver by the party of presentment or notice is sometimes embodied in the instrument itself; and in that case, it becomes part of the contract of every party signing the instrument either as maker, drawer or indorser. Thus, if the words "presentment and protest waived" or other words to that effect are inserted in the instrument, every party to the instrument whether drawer, indorser or maker or acceptor, is bound by such waiver, for, by becoming a party to the bill or note, he becomes a party to the waiver also. But different considerations arise, if such contract of waiver is not included in the instrument itself, but is made only by one of the

(*a*) Cf. *Turner* v. *Stones*, (1843) 12 L. J. Q. B. 303; *Robson* v. *Oliver*, (1847) 16 L. J. Q. B. 437.

(*b*) *Thackray* v. *Blackett*, (1812) 3 Camp. 164; *Udho Ram* v. *Hem Raj*, (1924) Lah. 198.

(*c*) *Hardy* v. *Woodrooffe*, (1818) 2 Stark, 319.

(*d*) Daniel, sec. 1115.

(*e*) *Ward* v. *Oxford Worcester etc. Ry. Co.*, (1852) 2 De G. M. & G. 750.

Sec. 76.

indorsers. "As each indorsement is a separate and independent contract in itself embodying, it is true, the terms of the bill, but not by implication, embodying the contract of any other indorser, a waiver by an indorser will be his individual waiver," and cannot affect the right of the other parties on the instrument to require due presentment or notice. The section too makes it clear that such waiver of presentment can be set up only against the party who promises to pay, notwithstanding non-presentment.

Waiver.

A waiver of presentment may take place at any time, that is to say, it may be made when the party signs the instrument or at any subsequent time before maturity. (*a*) It may be on a separate paper contemporaneously with, or subsequent to the drawing or indorsing, as the case may be. Due presentment is insisted upon solely, for the benefit of the drawer or the indorser; and if such person himself relaxes the rule, the holder need do no more than comply with the instructions of such persons. Waiver may not only be express, but may also be implied. (*b*) Any act or conduct of the drawer or indorser likely to produce in the mind of the holder the impression that the bill or note need not be presented, will dispense with the necessity of presentment against such party. Parol evidence of verbal waiver or waiver by conduct is admissible, for such evidence does not vary the written contract of indorsement, but only shows what the parties have settled between themselves to be the degree of the reasonableness of search to be made or other step to be taken in making presentment. (*c*) Thus, a parol promise to pay the note absolutely, or a promise to pay it if the maker does not, or a verbal agreement not to demand until after maturity, is evidence to prove the waiver of demand and notice. But waiver to operate must be clear and unequivocal, and there should be no ambiguity about it. The waiver must of course be that of the person entitled to require presentment and notice, for one cannot waive away the rights of another. (*d*) However, a partner generally may waive demand and notice on behalf of the firm, even after dissolution of the partnership, for the rights of each partner to act as agent of the firm continues even after the dissolution for the purpose of winding up the affairs of the firm; but it is different if the firm has already been discharged, and a waiver by one partner after dissolution in such a case will bind him only. Waiver may also be made by an agent

Express or implied.

By promise to pay.

By party.

By agent.

(*a*) *Jhandu Lal* v. *Wilayati Begam*, 47 All. 572; *Thakur Din* v. *The Oudh Commercial Bank Ltd.*, 57 I. C. 304.

(*b*) See B. of Ex. Act, 46 (e).

(*c*) Daniel, sec. 1093; *Jhandu Lal* v. *Wilayati*, 47 All. 572.

(*d*) *Roscow* v. *Hardy*, (1810) 12 East. 434; *Turner* v. *Leech*, (1821) 4 B. and Ald. 451.

Sec. 76.

To holder.

on behalf of his principal, but the agent must be one with clear authority to do so. Besides, the promise to pay mentioned in the section as excusing presentment, must be made to the party entitled to demand payment; a promise to a stranger will not amount to a waiver, though in certain cases it may be taken as evidence of admission by the party, that due presentment was made and notice was given. (*a*) Moreover, agreements of this sort are construed strictly and are not to be extended beyond the fair import of their terms. A waiver of protest is not a waiver of notice, nor is a waiver of notice a waiver of presentment. (*b*)

Waiver may also be made on the day of maturity. Thus, where on the day of maturity, the indorser requests the holder not to protest the note and offers to arrange the matter, it may amount to waiver of presentment. (*c*)

So far we have been dealing with waiver by agreement or conduct before maturity; the section itself is not so wide, but gives only one instance of such conduct, *i. e.*, a promise to pay. Other modes of waiver by conduct are equally applicable in India, as they form grounds of estoppel against such party.

Waiver after maturity.

The clause (c) of the section refers to waiver after maturity. Such waiver may be inferred either from a part-payment on account of the sum due on the instrument, or from a promise to pay the amount due either in whole or in part; (*d*) or, the party may expressly waive his right to take advantage of any default in presentment of payment. A part-payment of a bill or note after its maturity by the drawer or indorser will amount to an acknowledgment of liability and an admission that all the formalities that are required for the existence of such a liability have been complied with. Thus, it will be *prima facie* evidence of due presentment, and if it stood alone will amount to evidence that due presentment had been made. Such conclusion however may be rebutted by proving that the party paying had no knowledge of the insufficiency of presentment, or that he paid it under a mistake or in ignorance of his rights. It has been held that a promise to pay or a part-payment does not operate as waiver, unless the party did so with the knowledge that the instrument has not been presented. Thus, where an indorsee of a bill dishonoured by

Implied from part-payment.

(*a*) Cf. *Potter* v, *Rayworth*, (1811) 13 East. 417; *Fletcher* v. *Froggatt*, (1827) 2 C. & P. 569; *Rabey* v. *Gilbert*, (1861) 30 L. J. Ex. 170.

(*b*) *Keith* v, *Burke*, (1885) 1 Cab. & E. 551; *Baker* v. *Birch*, (1811) 3 Camp. 107.

(*c*) *Burgh* v. *Legge*, (1839) 5 M. & W. 418.

(*d*) *Croxon* v. *Worthen*, (1839) 5 M. & W. 5; *Cordery* v. *Colville*, (1863) 32 L. J. C. P. 210.

non-acceptance before maturity proposes to pay in ignorance of the indorsee's *laches*, there is no waiver of want of notice or of presentment. (*a*) Such part-payment should be made on account of the money due on the instrument. A general payment unaccompanied by any instructions as to appropriation cannot excuse a non-presentment, even if the holder appropriates the amount on account of the sum due on the instrument; for, an admission of liability under an instrument by part-payment cannot be inferred, unless it is proved that the payer paid it on account of the money due under the instrument. (*b*) Even a letter written by a prior party to the holder asking for further time to pay the bill, has been held to amount to a waiver. (*c*)

Or, from a promise to pay.

A promise to pay after maturity the amount due under an instrument stands on the same footing as part-payment. The one is an executed act, while the other is executory. But circumstances which may be relied on as a promise to pay in the one case, will not be sufficient to infer a promise in the other case. The principle underlying this provision has been the subject of controversy in America. It is argued on the one hand that the liability under an instrument having been once extinguished by non-presentment for payment, cannot be revived again by a mere subsequent promise to pay, without fresh consideration. On the other hand, it is maintained that this is not a case of revival of an extinct claim. Why the law holds that the holder cannot charge the drawee or indorser if he has not presented the instrument for payment, is that such drawer or indorser might have sustained injury by such conduct. As a subsequent promise to pay is equivalent to a declaration on his part that he has not sustained injury, the reason for the application of the principle itself does not exist, and therefore, no fresh consideration is necessary to support a subsequent promise to pay. This view seems to be sounder, and has been approved of in English and some American decisions, and has been adopted by both the Indian and the English Legislatures. Even where a liability is extinguished by the Statute of Limitation, the Indian Legislature has adopted the principle, that it may be revived by a new subsequent promise to pay. (*d*) It may be said in that case, that the Statute of Limitation does not extinguish the right but only the remedy; but the principle underlying section 28 of the Limitation Act is opposed to that view.

(*a*) *Goodall* v. *Dolley*, (1787) 1 T. R. 712; Cf. *Pickin* v. *Graham*, (1833) 1 Cr. and M. 725.

(*b*) *Cf.* Ind. Limitation Act, sec. 19.

(*c*) *Hopley* v. *Dufresne*, (1812) 15 East. 275.

(*d*) *Cf.* Ind. Contract Act, sec. 25.

Sec. 76.

The whole amount or only a part.

Under the Act, such a promise to pay need not be in writing. (*a*) It may be a promise to pay the whole or part of the amount due on the instrument. If it be only a promise to pay part of the amount due, is the promisor liable to pay the whole amount or only the part promised ? The section is not clear, and will rather support the view that the whole of the amount ought to be paid, as no presentment for payment is necessary under such circumstances. But, Daniel holds that the party will be liable only for the part promised, and reason would require it so, as the promisor has undertaken liability only to that extent. (*b*)

Promise to be absolute.

The promise to pay should be absolute, *i.e.*, it should not be equivocal. Neither should it be conditional; otherwise, it cannot be relied on as an absolute waiver. No particular words are necessary, but the words used must show clearly and distinctly the acknowledgment of liability and a promise to pay. Where a drawer said, he would "see the bill paid," it was held that it was a promise to pay the note or to see it paid at all events by the promisor. (*c*) But where the indorser said, that he would "rather pay than be sued" or "if I am bound to pay, I will," (*d*) it will not suffice as a waiver. In this connection, Justice Story in his book on Bills, has the following passage :—"The promise must be unequivocal and must amount to an admission of the right. If it be defective in either respect, or if it be a conditional offer of payment unaccepted, then in such a case the holder has no right to insist upon it as a waiver. So, if the promise be qualified, it must be received with the qualifications, and cannot be insisted upon as an absolute waiver." (*e*) It is to be noticed, however, that the sub-section does not mention that the promise should be unconditional.

Only *prima facie* proof of presentment.

A subsequent promise to pay is *prima facie* evidence of due presentment for payment. (*f*) It is urged on the ground of estoppel, that a subsequent promise to pay precludes absolutely the proof of insufficiency of presentment or of ignorance of the promisor that the instrument has not been presented, because the promisee relying upon the subsequent promise, may not have preserved evidence showing presentment or knowledge on the part of the promisor. Even the advocates

(*a*) See *Jhandu Lal* v. *Wilayati Begam*, 47 All. 572.

(*b*) Daniel, sec. 168; see *Fletcher* v. *Froggatt*, (1827) 2 C. and P. 569.

(*c*) *Hopes* v. *Alder*, (1880) 6 East. 16 (notes).

(*d*) See *Prideaux* v. *Collier*, (1817) 2 Stark. 57; *Borradaile* v. *Lowe*, (1811) 4 Taunt. 93; *Cuming* v. *French*, (1809) 2 Camp. 106 (notes); *Dennis* v. *Morrice*, (1800) 3 Esp. 158.

(*e*) *Cf.* Sec. 98 (g), *post*.

(*f*) *Croxon* v. *Worthen*, (1839) 5 M. & W. 5; *Gibbon* v. *Coggon*, (1809) 2 Camp. 188; *Taylor* v. *Jones*, (1809) 2 Camp. 105; *Cordery* v. *Colville*, (1863) 32 L. J. C.P. 210.

Sec. 76.

of this doctrine do not extend it to cases where such promise is obtained by deceit or fraud or where there is any other element which would vitiate any contract, such as, mistake of fact, undue influence or coercion. The enforcement of such a strict rule would cause hardship to the promisor in many cases, and the promisee is sufficiently protected without recourse to such a rule. Again, the words of the section "with the knowledge that the instrument has not been presented" would seem to lose considerable significance, if we adopt this rule, as want of such knowledge would be practically unnecessary if we shut out proof of it, though it might be said that the section only embodies a legal statement of the principle of waiver. The purpose of this section and the equities which arise between the parties are better served by holding that a promise to pay is only presumptive evidence of due presentment, which is rebuttable, by showing that it was duly presented. Then the holder, in his turn, may show that there was a subsequent promise to pay, and the promisor promised with the knowledge that the instrument had not been presented. (*a*)

Waiver implied from other acts.

The waiver of presentment may not only be inferred from a part-payment or promise to pay the amount, but may also be inferred from the conduct of the party who is sought to be made liable. Any act or course of conduct of the drawer or indorser from which a waiver can be inferred, will certainly excuse want of presentment on the part of the holder. Waiver need not be direct and positive; thus, when the drawer or indorser takes security from the acceptor or maker, knowing of the *laches* in presentment, or he thinks fit to acknowledge the amount due, (*b*) he may be said to waive the right to take advantage of the default.

Knowledge of facts essential for waiver.

Waiver under cl. (c) must be made by a person with full knowledge of facts, that is to say, knowledge on the part of the drawer or indorser that the holder has been in default in not making presentment is absolutely necessary for a waiver under the section; for waiver should be a conscious act. (*c*) Thus, if a drawer wrote to the holder "I accept notice of non-payment and admit liability etc," without the knowledge that no presentment had been made, it was held, that there was no waiver of presentment, and further, that a waiver of notice is not waiver of presentment. (*d*) If the drawer or indorser makes a promise to pay the instrument in ignorance of the

---

(*a*) Daniel, sec. 1157.

(*b*) *Rabey* v. *Gilbert*, (1861) 30 L. J. Ex. 170; See *Croxon* v. *Worthen*, (1839) 5 M. & W. 5.

(*c*) *Goodall* v. *Dolley*, (1787) 1 T. R. 712.

(*d*) *Keith* v. *Burke*, (1885) 1 Cab. & El. 551.

Sec. 76.

facts, nay more, even if he pays the same under such ignorance, he will not be bound thereby; because, in the former case, he will be absolved from the promise, and in the latter, he will be entitled to recover back the money paid. If the party waives in ignorance of his rights, or if he did not know at that time the legal effect of non-presentment for payment, the waiver would still be a good waiver. (*a*) Ignorance of law does not excuse any one, and this maxim is applicable also to cases like the present. When the promise to pay is made with the knowledge of *laches*, the plea that the party making it did not know its legal effect as waiver, or that he had a legal defence to the bill or that he made the promise under a supposed legal liability which did not truly exist, is unsustainable. (*b*)

5. When no damage to drawer.

The sub-clause (d) to this section is in substance the same as the corresponding section of the Bills of Exchange Act, (*c*) though the words in the two section are widely different. If the want of presentment cannot injure the drawer or put him to any loss, then non-presentment by the holder is excused. The onus of showing that the drawer could not suffer damage is on the party who wants to rely on it, as an excuse for the non-presentation. (*d*) The common instance of such a case is where the drawer draws the bill without any right to do so, or without any reasonable ground to expect that the drawee will honour it. If the drawer at the time of the drawing has no reasonable expectation that the bill will be paid up, as where he has no funds in the drawee's hands or has not made any arrangement with him for providing such funds, then the drawer commits a fraud or a folly in drawing the bill, and so he can suffer no loss or injury by want of presentment, which would naturally be fruitless in such cases. (*e*) So, in an early English case, (*f*) it has been held that lack of funds of the drawer in the hands of the drawee excused non-presentment. The reason of the rule is stated by one Judge (Ashurst, J.) as that the drawer commits fraud in such cases, and by another Judge (Buller, J.) as that the drawer could not suffer damage. But to state the rule in such broad language is perhaps not correct; for in certain cases, it may happen that

e.g., no funds of the drawer.

(*a*) Ind. Contract Act, sec. 21; *Bilbie* v. *Lumley*, (1802) 2 East. 469; see *Vishnu* v. *Kashinath*, 11 Bom. 174; Cf. *Pertap* v. *Mohendra*, 17 Cal. 291, 296; *Appavoo* v. *S. I R. Co.*, 56 M.L.J. 269; *Raja of Ramnad* v. *Secy. of State for India*, 52 Mad. 12; Daniel, sec. 1148.

(*b*) *Ibid.*

(*c*) B. of Ex. Act, sec. 46 (2) (c).

(*d*) *Madho Ram* v. *Durga Prasad*, 33 All. 4; *Gaya Din* v. *Sri Ram*, 39 All. 364; *Jhanda Ram* v. *Toda Mal*, 10 I. C. 405; *Nanhe Mal* v. *Chet Ram*, 41 All. 40; *Oudh Commercial Bank* v. *Thakur Din*, 59 I C. 604.

(*e*) *Terry* v. *Parker*, (1837) 6 A & E. 502; *Wirth* v *Austin*, (1874) L.R. 10 C. P. 689; In re *Bethell*, (1887) 34 Ch. D. 561, 567.

(*f*) *Bickerdike* v. *Bollman*, (1786) 1 T. R. 405; *Genda Lal* v. *Balkishan*, (1922) All. 422.

though there are no funds, the drawee might have promised to pay for the accommodation of the drawer, or he might be under an obligation to do so for some legal consideration or other.

or no expectation of drawer paying.

The true criterion seems to be to see whether the drawer had a right to expect or require the drawee to pay the bill at its maturity. Whenever such right exists, the drawer is discharged, if there be no due presentment. Though the drawer has no funds in the hands of the drawee, yet if he has a right to expect that the bill will be honoured, *e.g.*, where the bill is drawn on account of an anticipated consignment, the holder is still bound to present the bill in order to charge the drawer. The existence of a fluctuating balance, or a running account between the drawer and the drawee or a third person's promise to provide the drawee with funds or a previous authorisation of the drawee to draw bills, will also have the same effect. The section in the Bills of Exchange Act adopts this test; the word "and" in that section being used in a distributive rather than in a conjunctive sense. If this test is adopted, a question may well arise as to the time at which such reasonable expectation must exist. According to English cases, the drawer has a right to require due presentment and notice, if he has effects in the hands of the drawee at the time of presentment, though he may have had no funds in the hands of the drawee at the time of drawing the bill. It is submitted, that this reasonable expectation should continue till the time of maturity of the instrument. If the drawer had funds when he drew the instrument, but withdrew them before presentment, he forfeits the right to presentment. On the other hand, though he had made no arrangement at the time of drawing the bill, but makes one before the due date of presentment, by which he has a right to expect that the bill will be paid on presentment, then non-presentment by the holder discharges the drawer, as the arrangement relates back to the time when he drew the bill. (*a*) This rule is not altered by the acceptance of the drawee, though acceptance is *prima facie* evidence of the existence of funds in the hands of the drawee. But, when it is shown that the acceptor had no funds, or the drawer had no right to expect that the acceptor would pay the bill, presentment is not necessary in order to charge the drawer. (*b*)

Another criterion suggested, is to see whether the drawer would have any right to sue any other party for the amount due. After taking up the bill or note by paying it, if he has got such a right, he is

(*a*) *Robins* v. *Gibson*, (1813) 3 Camp. 334; *Rucker* v. *Hiller*, (1812) 3 Camp. 217; see *Hammond* v. *Dufrene*, (1811) 3 Camp. 145.

(*b*) *Bailey* v. *Porter*, (1845) 14 M. & W. 44.

Sec. 76.

presumed to have suffered injury, and then in such cases, presentment is necessary in order to charge the drawer.

Eng. Law and Ind. Law.

As has been already observed, the same test as found in the English law is adopted by the Indian Legislature in different words. While the English law views it from the relationship between the drawer and the drawee, the Indian law approaches the question from the point of view of possible results or consequences of want of such presentment; but there is no difference in substance between the two tests. The words used are "*could* not suffer damage," and not "*has* not suffered damage." Want of actual injury is no defence to a plea of non-presentment. The holder must show, that no possible injury could have resulted from default in presentment. The law requires presentment and notice as conditions precedent to the liability of the drawer and the indorser, not merely as an indemnity against *actual injury*, but as a security against any *possible injury* which might result from the holder's *laches*. The question of actual injury does not enter into consideration at all. As has been well said by Green, J. in *Farmer's Bank* v. *Vanmeter*, (*a*) "the modern doctrine is perfectly well-settled that the law implies an injury from want of due notice, and the presumption is so strong that in order to repel it, proof is required to show that it was impossible for the party to suffer any damage or inconvenience. Thus, in the case of the drawer, if the bill be drawn without funds in the hands of the drawee, and the drawer had no reason to expect that the bill would be accepted or paid, this is considered as a case in which it is shown that no possible prejudice can result to the drawer from want of notice." From the passage cited above, it can be gathered that the principle adopted by the Indian Legislature is not different from that accepted in England and America. It has been held that the burden lies heavily on a person suing on a hundi, to prove that the drawer could not have suffered any damage owing to non-presentment, and it was further held that even the fact that the defendant drew the money for the drawee many months later, did not show it. (*b*)

The main class of cases covered by sub-clause (d) is that of accommodation bills when they are drawn for the accommodation of the drawer, and the drawer has undertaken to supply funds to meet them. (*c*)

(*a*) 4 Rand. 553 (Amer.).

(*b*) *Bhikki Mal* v. *Raghubir*, 23 A. L. J. 861; *Genda Lal* v. *Balkishen*, (1922) All. 422; see *Bhawanji* v. *Assan—Pitamber*, (1925) Sind 241 (onus shifted, if drawer dishonestly denies consideration.)

(*c*) *Terry* v. *Parker* (1837) 6 A & E. 502; *Wirth* v. *Austin*, (1874) L. R. 10 10 C. P. 689; In re *Bethell*, (1887) 34 Ch. D. 561, 567.

It is to be noticed that the sub-section refers only to the drawer. The omission of the indorser is unfortunate, for the ground of exemption is applicable equally to him, when the bill is made or accepted for his accommodation, and he has no reason to expect the bill to be paid when presented. (*a*) But, where the intention was that the last indorser was to take the bill, the previous indorsers cannot be made liable without notice of dishonour. (*b*)

6. When drawer and drawee same.

Again, when the drawer and the drawee of a bill are the same person, the holder may treat the instrument as a promissory note ; and in the case of promissory notes, presentment is not necessary to charge the maker. (*c*) But this principle is not applicable, if it is intended to charge the indorser in due course. (*d*)

Even when the drawee or acceptor becomes insolvent before maturity, presentment is not dispensed with as against the drawer. Clause (d) will not cover such cases, because the relatives and friends of the insolvent may help the drawee or acceptor to pay the bill. (*e*)

7. When drawee fictitious.

Again, when the drawee is a fictitious person, presentment is dispensed with, not only against the drawer, but also against all other parties liable on the instrument, because no demand can be made upon a person who does not exist in reality.

8. When he is incompetent.

When the drawee is legally incompetent to contract, presentment is not dispensed with as against the indorsers, but presentment is not necessary as against the drawer, because he committed a fraud upon the holder in drawing on a person who is not legally liable to pay ; and as he could not suffer damage by want of presentment under the section, presentment is dispensed with. This rule is also applicable to the case of indorsers who participate in such fraud.

9. When drawee is dead.

When the drawee is dead at the time of maturity of the instrument, it is not easy to decide whether presentment is necessary under the Indian Law. Under section 75 of the Act, presentment to the legal representative may be made, but the holder cannot be compelled to do so. As non-presentment on that ground is not excused by this section, it is submitted that the holder will still be bound to present at the place of payment, if any, specified in the instrument, or at the place of business or resi-

(*a*) B. of Ex. Act. sec. 46 (2) (d)

(*b*) *Turner* v. *Samson*, (1876) 2 Q. B. D. 23.

(*c*) *Lachman Prasad* v. *Ramchandra*, 51 I. C. 859; *Pachkauri* v. *Mulchand*, 44 All. 554; *Jhandu Lal* v. *Wilayati Begam*, 47 All. 572; *Budhu Mal* v. *Gokal Chand*, 7 Lah. 113; *Shankar Das* v. *Ditto Ram*, 8 Lah. L. J. 604.

(*d*) *Shridhar* v. *Baxiram*, (1932) Nag. 55.

(*e*) *Udho Ram* v. *Hemraj*, 72 I. C. 777; *Russell* v. *Langstaffe*, (1780) 2 Doug. 514; *Sands* v. *Clarke*, (1849) 8 C. B. 751; Cf. *Turner* v. *Stones*, (1843) 12 L. J. Q. B. 303; *Robson* v. *Oliver*, (1847) 16 L. J. Q. B. 437; In re *East of England Banking Co.*, (1868) L. R. 4. Ch. App. 14.

Sec. 76.

dence of the deceased, if ascertainable by the holder after reasonable inquiry. It would be safer perhaps in all cases for the holder to present it for payment to the legal representative. (*a*)

The sub-clause (d) is confined to the case of the drawer. There seems to be no reason why its operation should be so restricted. If a bill is drawn for the accommodation of the indorser, or if he indorsed it for the accommodation of the drawer knowing at the time that it will not be honoured at its maturity, he also comes within the reason of the principle applicable to the drawer, and presentment to charge him will not be necessary. Ordinarily, however, an indorser is not affected by the bill being for the accommodation of the drawer or a third person or another indorser, and he will be entitled to require due presentment and notice.

10. When presentment impossible.

It is to be noticed that no provision is made in this section for excusing presentment, where it becomes impossible owing to causes beyond the control of the holder, and not imputable to his negligence. Section 75-A, which has been newly added, provides only for excusing the delay owing to such causes. There are certain circumstances of a general nature, which excuse the holder for non-presentment, which are from their nature of universal application, and are recognised in all systems of jurisprudence and mercantile law. Such cases are provided for in the Bills of Exchange Act, section 46, which may with profit be referred to in this connection. As illustration, we may mention 'political disturbances amounting to virtual interruption and destruction of trade, such as, breaking out of war between the country of the holder and the country of presentment, or the occupation by a public enemy of the country of the holder (*b*) or of presentment; or other political disturbances, such as, a riot or insurrection, when the closing of house and suspension of business are necessary for the protection of life and property. It is a recognised principle that these circumstances constitute a clear justification for omission to make due presentment and giving notice of dishonour.' Under this head may be mentioned also cases, where the government of one country, for reasons of State and of public good, issues positive and public prohibitions of all commercial enterprises between the country of the holder and the country of presentment. (*c*) Similarly, when the instrument is signed by the Crown, the drawer and the indorsers continue to be liable, as it is

By general circumstances.

(*a*) Cf. *Philpot* v. *Bryant*, (1828) 4 Bing. 717.

(*b*) *Patience* v. *Townley*, (1805) 2 Smith 223; see also *Sukhlall* v. *Eastern Bank Ltd.*, 46 Cal. 584.

(*c*) See *Rouquette* v. *Overmann*, (1875) L.R. 10 Q. B. 525; In re *Francke and Rasch*, (1918) 1 Ch. 470.

said, no *laches* can be imported to the Crown. (*a*) Again, the prevalence of a malignant epidemic disease so extensive and so serious as to suspend all commercial business and intercourse, will excuse the holder from making due presentment. This is recognised by all the text-writers on the subject, and there are cases decided in accordance with these principles in America. (*b*)

And special circumstances.

e. g., Illness,

or closing up of communication,

or delay in post.

Circumstances may suddenly intervene rendering it impossible on the part of the holder to make due presentment. Thus, sudden illness or the death of the holder at the time of maturity, will excuse delay in presentment. If the illness of the holder is relied on as an excuse, it must be shown to have been so sudden and severe as to prevent the employing of another; in case of death, the administrator must make demand and give notice at the earliest practicable time. Again, the impossibility of reaching the place where the maker resides, by the closing up of the communication and making intercourse impracticable, is recognised as sufficient excuse for non-presentment. The commonest case of delay in presentment is due to miscarriage or delay in transmission by the post-office, where presentment can be made through the post; but if the holder is himself responsible for the delay or where he misdirects the packet, delay will not be excused. These excuses do not however render presentment altogether unnecessary. As soon as the impediment ceases to operate, the duty to present revives and presentment must be made with reasonable diligence, and if the holder is in default, the drawer and indorsers are discharged. (*c*)

One or two circumstances of a special nature not provided for by this section may well be noticed here. One of them is where the holder receives the instrument from his transferor at a time so near its maturity, that it is impossible to make presentment on the due date at the place specified. This excuse can properly apply only as between immediate parties who have so transferred and received the instrument. (*d*) As to others who have transferred it long enough before maturity, they will certainly be entitled to stand upon the terms of their original contract.

Another case is when the drawer or indorser takes the property of the acceptor or maker on condition that he would meet the demand of the holder. The drawer or indorser has, in such cases, no recourse over or against any one, and so non-presentment cannot injure him in any way.

(*a*) Chitty (11th Edn.) 252.
(*b*) Daniel, secs. 1056 and 1059.
(*c*) See sec. 75-A.
(*d*) Cf. *Anderton* v. *Beck*, (1812) 16 East 248; *Cf.* B. of Ex. Act, sec. 39 (4).

Sec. 77.

Presentment to charge guarantor.

Presentment for payment is not generally necessary in order to charge a guarantor who guarantees due payment of a bill or note, on the ground that the guarantor is the debtor of the holder, and it is his duty to seek the creditor and pay the debt the very day that it is due. (*a*) But the sounder view, according to Daniel, seems to be that he is entitled to require demand upon the maker within a reasonable time and notice of non-payment within a reasonable time after default. (*b*) Such reasonable time is not, however, measured by the strict rules applicable to negotiable instruments; but what is generally required is reasonable diligence on his part, considering all the circumstances of the case. Even if presentment is not made or notice not given, the guarantor will be discharged only if he has suffered any loss, and that too only to the extent of the loss. (*c*) Again, a distinction may be made between the case of a guarantor for a principal party liable on a negotiable instrument, such as, a maker or an acceptor, and that of a guarantor for a surety, such as a drawer or an indorser. In the former case, no demand upon the maker or the acceptor is necessary to charge the guarantor, while in the latter, a demand upon the maker or acceptor, at least within a reasonable time, must be made. (*d*)

Liability of banker for negligently dealing with bill presented for payment.

77. When a bill of exchange accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

NOTES.

Banker, to take due care of bill.

If the banker with whom a bill of exchange is left for payment returns the bill refusing to pay it, he is bound to take due care of the instrument and return it in almost the same state as it was when left with him. So, if he cancels the acceptance or any other portion of the instrument and returns it defaced, he will be held liable to the holder

---

(*a*) *Walton* v. *Mascall*, (1844) 13 M & W. 72; *Hitchcock* v. *Humfrey*, (1843) 5 M. & G. 559; *Philips* v. *Astling*, (1809) 2 Taunt. 206; *Carter* v. *White*, (1884) 25 Ch. D. 666.

(*b*) Daniel, sec. 1787; see *Shanmugam* v. *Chinnasami*, 14 Mad. 470.

(*c*) *Ibid*, 14 Mad. 470.

(*d*) Chalmers (10th Edn.) 479.

for the special damage sustained by him by the cancellation of the bill, unless there was no want of due care on the part of the banker. But, if a cancellation is made by mistake, and if it is noted that it was cancelled by mistake, the banker will not be liable. Thus, in a case where A was the holder of a foreign bill drawn upon B in England payable at the bank of C, the bill was presented at C's bank, who having the effects of B in his hands cancelled the acceptance without however, rendering the acceptance illegible. In the course of the day, B finding himself insolvent, ordered C not to pay, whereupon C wrote on the instrument, "cancelled by mistake, order not to pay," and the bill was returned to D, the banker of A, in this state, the same day, before the settling hour. It was proved that the usage in London was to cancel bills intended to be paid, and where cancellation has occurred by mistake, to indicate the same by writing on the bill. It was held in the above case, that no legal liability was cast upon C from which a promise could be inferred that he would pay the bill or return it without having cancelled or destroyed the acceptance, and that the duty cast upon C was no more than to take due care of the bill, and if he did not choose to pay it to return it uncancelled, unless it has been cancelled by mistake, and in that case to indicate the same by writing on the bill. (*a*) In another case, where the acceptance in a bill was cancelled by mistake by a drawee in case of need, under the wrong impression that it had been payable, at his house, it was held that the prior indorsers were not discharged, as the cancellation was through a mistake which was indicated by the words "cancelled by mistake." (*b*) Again, if through the negligence of the holder, the bill was returned to a wrong party, the banker will not be held liable, so long as there was no want of due care on his part.

Banker, as a bailee.

Thus, the banker's position is analogous to that of a bailee of the bill for the holder. If he keeps and refuses to deliver the bill improperly, or so negligently deals with it that loss is thereby caused to the holder, he will have to compensate the holder for such loss. This provision is really a part of the law of torts, but the Select Committee inserted this provision with a recommendation that this provision might be retained till the law of torts should be codified.

By this section, the bankers acting with due care, are placed in a better position than the other acceptors, presumably because of the nature and the amount of business they have to do.

(*a*) *Warwick* v. *Rogers*, (1843) 5 M. G. 340; *Wilkinson* v. *Johnson*, (1824) 3 B. & C. 428; *Prince* v. *Oriental Bank*, (1878) 3 A. C. 325.

(*b*) *Raper* v. *Birkbeck*, (1812) 15 East. 17; *Novelli* v. *Rossi*, (1831) 2 B. and Ad. 757; see notes to sec. 82, *post*.

Sec. 77.

Also when bill left for acceptance.

The same rule will, it seems, apply also in a case where a bill is left with a banker for acceptance; and due care will have to be exercised by such banker in delivering back the bill. In England, it is the regular and usual course of business in commercial transactions to deliver out a bill of exchange, left for acceptance, to any person who mentions the amount, and describes any private mark or number upon it; and if the clerk of the party leaving it, enables by his conduct, a stranger to discover the mark or number, in consequence of which the bill is delivered out to a stranger, the party leaving it cannot maintain trover for the bill against the party who so delivered it out. (*a*)

(*a*) *Morrison* v. *Buchanan*, (1833) 6 C. & P. 18; see notes. to sec. 63, *ante*.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

NOTES.

Payment to whom?

The section points out the person to whom the payment should be made in order to discharge the maker or the acceptor. If we view that the scope of the section is limited to this point only as indicated in the marginal note, the section is all right. But as it runs, the section is open to the criticism that it is incomplete. For, it does not indicate the person by whom the amount is to be paid so as to discharge the maker or the acceptor; and again, from the language used, one may infer that a different rule is applicable to discharge the indorsers, whereas it is not really so.

To holder or his agent.

Payment should be made to the holder of the instrument, (*a*) or his accredited agent; (*b*) otherwise, the party liable is not discharged from liability, unless the holder elects to treat payment to any other person as one made to him. (*c*) Hence, it has been held that a Bank holding a bill for collection with a lien upon it, was a holder in due course, and any payment made to the original indorser in respect of the bill, cannot discharge the liability of the acceptor to the holder. (*d*) It has also been held, that the maker is entitled to pay to the holder, even though he may receive notice, that the debt for which the bill or note was given, had been assigned. (*e*) Moreover, payment should not be made prematurely; otherwise, the acceptor will be liable to pay again on the instrument in the hands of a *bona fide* transferee for value. (*f*) If at all a

---

(*a*) *Sreeramulu* v. *Venkata Reddi*, 8 M. L. T. 247.

(*b*) *Raghunath* v. *Radhakishan*, (1929) Lah. 634.

(*c*) *Field* v. *Carr*, (1828) 5 Bing. 13.

(*d*) *Royal Bank of Scotland* v. *Rahim*, 49 Bom. 270.

(*e*) *Bence* v. *Shearman*, (1898) 2 Ch. 582.

(*f*) *Burbridge* v *Manners*, (1812) 3 Camp. 193.

Sec. 78.

payment is made by the maker or acceptor before maturity, he must get the bill or note delivered over to him; in which case, he can re-issue the instrument so as to make himself and all subsequent parties liable. (*a*) Even if the maker neglects to get back the instrument from the payee on payment, and allows him to negotiate, a *bona fide* holder is entitled to sue the maker and recover the amount from him.(*b*) This in itself conclusively shows that a payment before maturity does not discharge the instrument. 'Holder' is defined in section 8 *ante*, as the person entitled in his own name to the possession of the instrument and to receive or recover the amount due thereon from the parties; (*c*) and according to that section, a thief or a finder of a negotiable instrument who can in certain cases give a valid discharge is not a holder. The definition in the Bills of Exchange Act is so framed as to include such persons. If a negotiable instrument is made payable to bearer, or is indorsed in blank so that the title to the instrument passes by mere delivery, a person who steals it or finds it, can give a valid discharge, and a *bona fide* payment to that person discharges the maker or the acceptor. Though the definition under section 8 *ante* is not comprehensive enough to include such persons, and though under the present section payment is required to be made to the holder, the same result is arrived at under the Indian Law also, as this section is controlled by section 82, cl. (c), *post*. Under that clause, in the case of instruments payable to bearer or indorsed in blank, the acceptor or the maker is discharged by payment in due course, which under section 10 is wide enough to include a payment to a thief or a finder who is in possession of the instrument. But if the instrument is not one payable to bearer, payment to a person under a forged indorsement is not a good payment, and does not relieve the person from liability to the true owner of the instrument, who continues to be its holder. (*d*)

Thief or finder of a negotiable instrument.

Not to a beneficiary.

Reliance is placed upon the express words of the section, especially on the word 'holder', to hold that a payment to any other person, though he be the real owner of the instrument or a beneficiary, cannot be pleaded in an action by the holder on the instrument. (*e*)

(*a*) *Morley* v. *Culverwell*, (1840) 7 M. & W. 174; *Attenborough* v. *Mackenzie*, (1856) 25 L. J. Ex. 244; *Ramanathan* v. *Gundu*, (1928) Mad. 1238; *Bulaqui Mal* v. *Abdul Rahim*, (1923) Lah. 638.

(*b*) *Glasscock* v. *Balls*, (1889) 24 Q. B. D. 13; Cf. *Bartrum* v. *Caddy*, (1838) 9 A and E 275; 36 L. W. (N. R .C.) 29.

(*c*) *Sreeramulu* v. *Venkata*, 8 M. L. T. 247; *Ramzan Ali* v. *Vellaswami*, 8 I. C. 967; *Patoju Sangayya* v. *Patoju Sanyasi*, 23 I. C. 545.

(*d*) *Thorappa Devanappa* v. *Umedmalji*, 25 Bom. L. R. 604.

(*e*) See notes to sec. 8, at pages 58-60 *ante*; see also *Narain* v. *Uttaram Rao*, 15 N. L. J. 45; *Jaswant* v. *Gobind*, 140 I. C. 13; Contra *Surajman* v. *Sadanand*, 11 Pat. 616.

As will have been noticed, the opinion on this point is conflicting, though the preponderent view is as above stated. A *via media* has been suggested in a recent case in Allahabad, (*a*) where the principle above stated is accepted; but in the suit brought by the real creditor to which the maker and the holder of the note were parties, a decree was passed against the maker, with a proviso that payment shall be made to the plaintiff, on his securing a valid discharge of the maker by the holder of the note. (*b*) A minor is not a holder entitled to demand payment when the instrument runs in the name of his mother, though it is taken for his benefit. (*c*) It has been held, that an indorser or a drawer who gets back the instrument is a person entitled to payment, even though there may be no indorsement in his favour when he took it for the second time. (*d*)

To one of two or more partners.

If there are two or more holders who are partners, then payment to one of them would be good, as each partner is deemed to be the agent of the others. (*e*) But, difficulty arises if they are not partners. Under section 45 of the Contract Act, the right to claim performance of a promise to two or more persons jointly, (unless a contrary intention appears from the contract itself) rests with all of them jointly during their lives. This section would certainly support the view, that no one of them without joining the others could claim performance of the contract in a suit, and it may be argued that if one of them has no right to enforce the contract by a suit, he has no right to give a valid discharge; but this argument was not approved of by the Madras High Court, in the case of *Barber Maran* v. *Ramana Goundan*, (*f*) where it was held that payment to one of the joint creditors, extinguished the liability of the debtor completely. Their Lordships base their decision on the last paragraph of section 38 of the Contract Act and upon the English case-law on the subject. The rule thus laid down applies with greater force to the case of joint creditors who are members of a joint Hindu family, where the manager can give a valid discharge to the debtor of the family. (*g*)

Or of joint holders.

To manager of Joint Hindu family.

Payment by whom? By maker or acceptor.

Again, payment by any person other than the maker or the acceptor or some one on his behalf as his agent, does not discharge the lia-

(*a*) *Sewa Ram* v. *Hoti Lal*, 53 All. 5.

(*b*) *Ibid.*

(*c*) *Ramanuja* v. *Sadagopa*, 28 Mad. 205; *Dorai Lal* v. *Sewak Ram*, 13 A. L J. 695.

(*d*) *Subramanian* v. *Alagappa*, 30 Mad. 441; *Marimuthu* v. *Krishnasami*, 17 Mad. 197; *Jameson & Co.* v. *Scott*, 36 Cal. 291; *Ponnayya*, v. *Palaniappa*, 7 M. L. T. 271; but see *Ghulam Mohiuddin* v. *Ram Ditta*, (1930) Lah. 248.

(*e*) *Jacaud* v. *French*, (1810) 12 East. 317.

(*f*) 20 Mad. 461; *Annapurnamma* v. *Akkayya*, 36 Mad. 544 (F.B.); *Peri Ramasami* v. *Chandra Kottayya*, 47 M. L. J. 840. See *Shrinivasa Das* v. *Meher Bai*, 41 Bom. 300 (P.C.).

(*g*) *Veliet Doss* v. *Bunarussee Roy*, (1864) W.R. 262.

Sec. 78.

bility of the maker or the acceptor. Under the Contract Act, a third person may perform the promise of a party to the contract, and if the promisee accepts such performance, he cannot enforce it against the promisor. (*a*) A third person may pay off the debt due under a contract, even against the will of the debtor under the Indian Contract Act, and such payment, when accepted, will discharge the debt. It is submitted that under the Indian law, payment of the amount by a stranger on behalf of the acceptor or maker, would discharge him. Generally, if a stranger pays the amount to the holder, he would be regarded as a mere purchaser of the instrument. (*b*) But a payment by a stranger on behalf of a party to the instrument, has the same effect as though it were authorised by that party. Where the father of a debtor wrote to the creditor offering an amount less than that of the debt, in full settlement of the debt due, and enclosing a draft for that amount, and the creditor cashed it and retained the proceeds, it was held that the debt had been discharged. (*c*) But the payment by the stranger must be for and on account of the debt, and must be made with the authority of the debtor. (*d*) The assent of the debtor may be presumed. (*e*) The payment might be subsequently ratified by a plea of payment, in an action for the amount. (*f*) The question arose as to whether a person who became a surety on a hundi without the consent of the drawer, and who paid the amount in due course, the drawer not having paid the amount, is entitled to be indemnified by the drawer, and it was held that he is not a surety, and that he must be simply regarded as a holder for value, and as such would have no higher rights than those of an ordinary holder. (*g*) If the amount due under the instrument is paid by the drawer or the indorser, it is clear that the acceptor is liable to the drawer or indorser so paying, except in the case of bills drawn for the accommodation of the drawer or the indorser. (*h*) In such cases, when the party accommodated pays, the bill is discharged. In other cases, there is no discharge of the instrument, and it may be further circulated by the drawer or indorser paying the amount. Though the acceptor's liability towards the drawer or the indorser paying the amount is admitted, his liability to the holder so paid-off, is the subject of con-

By a stranger, for maker or acceptor.

By drawer or indorser.

By party accommodated.

(*a*) Ind. Contract Act, sec. 41.

(*b*) *Jones* v. *Broadhurst*, (1850) 9 C. B. 173; *Simpson* v. *Eggington*, (1855) 10 Ex. 845.

(*c*) *Hirachand Punamchand* v. *Temple*, (1911) 2 K. B. 330. See *Societie Des Hotels* v. *Cummings*, (1922) 1 K. B. 451, 459.

(*d*) *Belshaw* v. *Bush*, (1851) 11 C. B. 191; *Kemp* v. *Balls*, (1854) 10 Ex. 607; Re *Rowe*, (1904) 2 K. B. 483.

(*e*) *Cook* v. *Lister*, (1863) 32 L. J. C. P. 121, 127.

(*f*) *Simpson* v. *Eggington*, (1855) 10 Ex. 845; *Walter* v. *James*, (1871) L. R. 6 Ex. 124, 127.

(*g*) *Muthu Raman* v. *Chinna Vellayan*, 30 M. L. J. 369.

(*h*) *Jameson & Co. v. Scott*, 36 Cal. 291.

flicting decisions in England. (*a*) The preponderance of authority is in favour of the view that the holder may sue the acceptor, though he has received payment from the drawer or indorser ; and it is held that if he recovers the amount, he holds the money as trustee for the drawer or the indorser paying him.

Payment of a bill, under the Law Merchant, is generally understood as a payment in cash at the time of maturity ; (*b*) so that, where a holder receives from the drawer part of the amount due, and gets an indorsement of the promise of payment of the balance at a future time, it does not discharge the acceptor.(*c*) The section seems to require that payment should be made in cash or other legal currency, by the use of the words ' payment of the amount due ' ; but this may be construed as indicating the object, and not the medium of payment. " Payment " is not a technical word ; it has been imported into legal proceedings from exchange and not from law treatises " ; (*d*) so, payment may be made not only in money but also by other means. Though the obligee cannot compel the holder to accept payment in any medium other than money, still if the holder agrees to any other mode, payment by such mode is good. The holder is entitled to receive money, *i.e.*, coins, or currency notes recognized as legal tender ; but he may choose to accept satisfaction in any other form. Thus, if the parties agree to set-off one debt against another, (*e*) or that credit should be given to the holder, (*f*) or if the holder takes another bill in satisfaction of the old one, (*g*) payment is said to be effected. Where the payee directed the maker to hold the amount of the note in trust for his children, his liability under the note was held to be discharged. (*h*) Payment by delivery of goods or bills or bonds when accepted by the holder, operates as a discharge. (*i*) When the holder takes a new bill or cheque for an old one, it is always a question of intention to be gathered from the circumstances of each case whether he took it in satisfaction of the debt due or only as a conditional payment. (*j*) Part-payment when accepted,

Payment in cash or currency.

or any medium agreed on.

(*a*) *Johnson* v. *Kennion*, (1765) 2 Wils. 262 ; *Walwyn* v. *St. Quintin*, (1797) 1 Bos. & P. 652, 658 ; but *Bacon* v. *Searles*, (1788) 1 H. Bl. 88 ; *Jones* v. *Broadhurst*, (1850) 9 C. B. 173 ; *Rundall* v. *Moon*, (1852) 12 C. B. 261.

(*b*) *Morley* v. *Culverwell*, (1840) 7 M. &. W. 174.

(*c*) *Ellis* v. *Galindo*, (1784) 1 Doug. (K. B.) 250 (n).

(*d*) Stroud's Judicial Dictionary, Vol. III, 1435.

(*e*) *Cripps* v. *Davis*, (1843) 12 M. & W. 159.

(*f*) *Atkins* v. *Owen*, (1834) 4 A. & E. 819.

(*g*) *Sibree* v. *Tripp*, (1846) 15 M and W. 23 ; *Perianan* v. *Kudupoody Mallaya*, 51 I. C. 577; *Jamna Bai* v. *Vasanta*, 39 Mad. 409 ; see Appendix.

(*h*) *Abdul Hakim* v. *Ebrahim Solaiman*, 33 C. L. J. 132.

(*i*) *Ibid.*

(*j*) See Appendix.

Sec. 78.

by the holder in satisfaction of the full amount does discharge the obligee under the Indian law, though such payment does not in English law operate as a valid discharge, unless such payment is beneficial to the holder, or is effected by way of accord and satisfaction. (*a*) Thus, in England, if a smaller sum is paid before the amount is due, or by way of composition or settlement of a doubtful claim, or when such smaller sum is paid by a person other than the debtor, a valid discharge is effected. But it has been held that a negotiable security may operate in satisfaction of a debt of a greater amount, since it is satisfaction in another form, and the instrument may be more advantageous than the original debt which was not negotiable. (*b*)

Payment when complete.

Payment is complete as soon as the money is handed over to the holder. Payment by a banker to a private individual is complete, and the property in the money passes as soon as the money is laid on the counter (*c*). It cannot thereafter be recovered by the banker, if he discovers that the drawer's money with him was insufficient, (*d*) or that the money was paid in ignorance of the letter of countermand from the drawer. (*e*) The question is really whether there is an equitable right of restitution or not. (*f*) If, however, the payee of a cheque given in substitution for a bill of exchange, on presenting the cheque for payment, is induced by a false representation on the part of the banker or his servants to allow the money placed on the counter to be withdrawn, payment cannot be said to have been made, and the payee is entitled to recover from the acceptor of the bill of exchange. (*g*)

Payment to the wrong person.

The maker or the acceptor or the indorser should take care to make the payment to the right person, for, if payment is made to a wrong person, the legal owner may sue for the money again. When a bill payable to 'John Smith or order,' is presented for payment by another person of the same name, and if the acceptor pays such person, he is not discharged. If the acceptor suspects that the bill is held wrongfully, he may refuse payment, but in doing so, he acts at his own peril; at any rate, the holder is not bound to give proof of his identity. Possession is *prima facie* evidence of identity. (*h*)

(*a*) *Foakes* v. *Beer*, (1884) 9 A. C. 605.

(*b*) *Sibree* v. *Tripp*, (1846) 15 M. & W. 23; *Goddard & Son* v. *O'Brien*, (1882) 9 Q. B. D. 37; *Thomas* v. *Heathorn*, (1824) 2 B. & C. 477.

(*c*) *Chambers* v. *Miller* (1862) 13 C. B. N. S. 125.

(*d*) *London Chartered Bank of Australia* v. *Mc Millan*, (1892) A. C. 292.

(*e*) *Punjab Industrial Agency* v. *Mercantile Bank of India*, (1930) Lah. 852.

(*f*) *Ibid*; *Kelly* v. *Solari* (1841) 9 M. & W. 54; *K. M. P. R. Firm* v. *Official Assignee*, (1923) Mad. 17.

(*g*) *London Banking Corporation* v. *Horsnail*, (1898) 3 Com. Cas. 105.

(*h*) *Bulkeley* v. *Butler*, (1824) 2 B. & C. 434, 441.

Part-payment discharges the party *pro-tanto*, but in order to be a defence against a subsequent *bona fide* holder for value, it must be made at, or after, maturity. It would seem that if a bill remains in the hands of the holder after payment in full or in part by the drawer or indorser, the acceptor is not discharged, but the holder is entitled to sue for the entire amount, and in case of payment, he will hold the amount to the extent to which he has been paid as trustee for the drawer or the indorser. (*a*)

Money paid under mistake.

Money paid under the impression that the bill paid was a genuine one, when it really was a forgery, may be recovered, if the mistake is discovered, and the payment is claimed at once, (*b*) and before the person paid loses his remedy as against the others. (*c*) But if the money is paid in good faith, and received in good faith, and there is an interval of time in which the position of the holder may be altered, the principle is that money once paid cannot be recovered back, though no legal right may be compromised by reason of payment. (*d*) The question is said to be really one whether there is an equitable restitution or not. (*e*) Dealing with the question of mistake of fact relating to negotiable instruments, Paget in his book on Banking, points out the distinction between the two points of view, on which the theory of recovery of money paid under mistake is allowed. The first is that, if a holder has had the money for such an interval that his financial position may, not necessarily will, be affected, he can keep it as laid down in *London and River Plate Bank* v. *Bank of Liverpool*, (*f*) and the second is that laid down by the Privy Council in *Imperial Bank of Canada* v. *Bank of Hamilton*, (*g*) where the Judicial Committee said that the rule as stated above was held to be stringent, and that it does not apply to cases when the notice of mistake is given in a reasonable time and no loss has been occasioned by the delay in giving it. The learned author after referring to the later case of *Morison* v. *London County and Westminster Bank*, (*h*) prefers the first rule as the more sound, and bases it on the observations of Mathew, J. in *London and River Plate Bank* v. *Bank of Liver-*

(*a*) *Jones* v. *Broadhurst*, (1850) 9 C. B. 173; *Thornton* v. *Maynard*, (1875) L. R. 10 C. P. 695.

(*b*) *London & River Plate Bank* v. *Bank of Liverpool*, (1896) 1 Q.B 7; *Jones Ltd.* v. *Waring and Gillow, Ltd.*, (1926) A. C. 670 [where the subject has been fully considered]. See *Goldman* v. *Cox*, (1924) 40 T. L. R. 744.

(*c*) *Imperial Bank of Canada* v. *Bank of Hamilton*, (1903) A. C. 49; *Wilkinson* v. *Johnson*, (1824) 3 B. & C. 428; *Bhuputram* v. *Hari Prio*, 5 C. W. N. 313.

(*d*) *Raghunath* v. *Imperial Bank of India*, 50 Bom. 49; *British American Bank* v. *British Bank for Foreign Trade*, (1926) 1 K. B. 328.

(*e*) *Punjab Industrial Agency* v. *Mercantile Bank*, (1930) Lah. 852; *K. M. P. R. Firm* v. *Official Assignee*, (1923) Mad. 17.

(*f*) (1896) 1 Q. B. 7.

(*g*) (1903) A. C. 49.

(*h*) (1914) 3 K. B. 356.

Sec. 79.

pool, (*a*) that it is the right of the holder of a bill to an immediate and conclusive answer as to its fate on the due date, which is an element essential to the negotiability of the instrument and entirely demanded by the exigencies of business. How far this view is acceptable in our Courts is difficult to decide, as the decisions of the Privy Council are more binding on our Courts than those of the Court of Appeal in England. If the maker or acceptor pays the money due, to a wrong person who holds the instrument under a forged or unauthorised indorsement, he will still be liable to the true owner, though he may be entitled to recover the amount he paid from the person he has wrongly paid. (*b*) The true owner of the money also may, if he chooses to do so, recover from the person wrongly paid, the money paid to him, as if it were money paid to his use. (*c*) But a banker, who pays under a mistake that the drawer has assets, cannot recover the money from the payee when the banker finds that the drawer has no assets, though it is paid under a mistake, and the proper remedy for the banker will be against the customer. (*d*) But money paid voluntarily or under a mistake of law cannot be recovered. (*e*) To make the money paid by mistake recoverable, the mistake must be one of real fact, (*f*) and it must be between the parties and in the same transaction. (*g*)

Interest when rate specified.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

(*a*) (1896) 1 Q. B. 7.

(*b*) *Shanmuga* v. *Govindasami*, 30 Mad. 459; *Thorappa Devanappa* v. *Umedmalji*, 25 Bom. L. R. 604.

(*c*) *Bobbett* v. *Pinkett*, (1876) 1 Ex. D. 368; *Ogden* v. *Benas*, (1874) L. R. 9 C. P. 513; *Mc Entire* v. *Potter*, (1889) 22 Q.B. D. 438; *Morison* v. *London County Bank*, (1914) 3 K. B. 356; *Thorappa Devanappa* v. *Umedmalji*, 25 Bom. L. R. 604; see also *Llyods Bank* v. *Chartered Bank of India, etc.*, (1929) 1 K. B. 40, 55.

(*d*) *Chambers* v. *Miller*, (1862) 32 L. J. C. P. 30; see notes to sec. 85, *post*.

(*e*) *Cf.* Ind. Contract Act, sec. 21; *Allcard* v. *Walker*, (1896) 2 Ch. 369, 381; *Raja of Ramnad* v. *Secy. of State for India*, 52 Mad. 12.

(*f*) *Sinclair* v. *Brougham*, (1914) A. C. 398 (H. L.); *Holt* v. *Markham*, (1923) 1 K. B. 504.

(*g*) *Jones* v. *Waring and Gillow*, (1926) A. C. 670.

NOTES.

Rate of interest.

The section deals with the rate of interest and the time from which, and up to which, it is to be calculated. The section gives no option to the Court to disallow interest when a specified rate is provided for in the note. (*a*) The rate of interest is the rate specified in the instrument, and such rate is to be calculated from the date of the instrument. Though dating is not essential to the validity of a negotiable instrument, it becomes material in calculating the interest due. If the instrument is undated, parol evidence may be given to show the date on which the instrument came into existence. An agreement to pay compound interest must state clearly that interest is to be paid on unpaid interest, and a stipulation that interest at the rate of one per cent. per mensem is to be calculated at the end of each year does not mean compound interest. (*b*) Interest is to be calculated at the rate specified up to the date of tender or the realization of such amount. Realization may include realization by process of Court; but it is not used in that sense in the section, as is apparent from the clause following. If the holder has recourse to suit, the interest is to be calculated at the rate specified till a date to be fixed by the Court. The words of the section are imperative and the Court cannot cut down the interest, however high it may be, till a date fixed by the Court after the institution of suit. (*c*) After such date, the Court may fix any rate of interest, but it is the usual practice of the Court to allow the contract rate till the date of decree, and then to reduce the rate of interest, if it be higher, to six per cent. (*d*) It is based upon the principle that the old debt is merged into a new debt created by the decree which is regarded as good security. When a promissory note is inadmissible in evidence, the plaintiff cannot claim interest on the loan at the contract rate, as in such a case, only a reasonable rate must be allowed. (*e*) But if the plaintiff was credited with compound interest in the defendant's books, he is entitled to recover compound interest. (*f*) Where the provision as to interest was ambiguous, as when the promise to pay was at 2½ per cent. without any indication whether it was payable monthly or yearly, it was held that oral evidence was admissible to show that it was intended to be paid at 2½ per cent. per month. (*g*)

Contract rate.

Till date fixed by Court.

(*a*) *Govindjee* v. *Ko Po Yee*, 11 I. C. 891.

(*b*) *Rajendra Narain* v. *Bijai Govind*, 2 M. I. A. 253 (P. C.).

(*c*) *Ghazaffar Hussain* v. *Mahabir Prasad*, 17 I. C. 309.

(*d*) Civ. Pro. Code, sec. 34.

(*e*) *Ismail Hoosain* v. *Purbhubai*, 6 Rang. 415.

(*f*) *Bharat National Bank* v. *Banarsi Das*, 5 Lah. 129.

(*g*) *Monmotha* v. *Nabin Chandra*, 14 C. W. N. 1100.

Sec. 79.

Relief against unconscionable rate, or penal rate.

The section does not prevent the Court from giving relief against an exorbitant rate of interest under section 16, cl. (a) of the Contract Act, or against interest penal in its nature. Generally, such relief can be given only between the immediate parties to the instrument; but if the rate of interest is so high as to fix the transferee with notice of the equities between the parties, or if the provision as to interest is on the face of it penal, it is submitted that the Courts may grant relief even against the transferee. It is the practice of certain money-lenders to deduct interest in advance with an agreement to receive the principal in certain stated monthly instalments containing a default clause. It is not illegal to deduct interest in advance though it may hit hard on the borrower, as it is by way of discount. (*a*) Payment of advance-interest and the default clause, generally result in enhancing the rate of interest and making the transaction substantially unfair and oppressive.

The section states that the interest is to be calculated from the date of the instrument. It is not clear whether the rule applies to cases where the amount is payable a certain period after date or after sight. In the cases of instruments payable on demand or with interest from date, interest is payable from the date of the bill. But to allow interest in cases, where the amount is not due on the date of the instrument but later, seems to be unjust; but the section seems to allow such interest, especially as in section 80, it is expressly stated that the interest is to be calculated from the due date, and no such provision is found in this section (*b*). It has further been held that this provision does not, preclude the Court from applying the provisions of the Usurious Loan Act. (*c*) Moreover, compound interest at a rate exceeding the original rate on default is a penalty; but it does not mean that it should be necessarily reduced, unless exorbitant or for some other reason. (*d*)

Interest ceases on tender.

The running of interest can always be arrested by proof that the defendant in the case, made a valid tender, such as the plaintiff was bound to accept.(*e*) The promise in the negotiable instrument being one to pay money, the tender must be an unconditional offer to pay the full amount due in cash or other currency which is recognised as legal tender by the law in India.

(*a*) *Tipparah Loan Office* v. *Gour Chandra*, 2 C. L. R. 349.

(*b*) Secs. 9 (3) and 57 of the B. of Ex. Act.

(*c*) Act X of 1918; *Sheobans* v. *Shah Madho Lal*, (1931) All. 662.

(*d*) *Bishen Das* v. *Gurdas*, (1930) Lah. 148.

(*e*) Ind. Contract Act, sec. 38.

The Hindu rule of Damdupat which forbids a person to recover by way of interest an amount exceeding the principal due is not now enforced in this country. (*a*)

Sec. 80.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, * notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment he is liable to pay interest only from the time that he receives notice of the dishonour.

NOTES.

While section 79 provides for the case in which interest is made payable by the terms of the instrument itself, the present section provides for the case where no rate of interest is mentioned in the instrument. In as much as before the Act, the Courts in India would have followed the law laid down in English text-books, and would have, in accordance with the mercantile usage, allowed interest from the date of the maturity of the instrument, the proper construction to put on the section, though the language is not felicitous, is that it governs alike the case in which interest but not the rate is specified, but also the case in which

Interest when no rate specified.

(*a*) *Subramania* v. *Subramania*, 31 Mad. 250; but see *Hari Lal*, In the matter of, 33 Cal. 1269 and *Nusserwanji* v. *Laxman*, 30 Bom. 452. See also *Debb Prasad* v. *Kusum Kumari*, (1930) Pat. 442.

* The words "notwithstanding any agreement relating to interest between any parties to the instrument," were substituted for the words "except in cases provided for by the Code of Civil Procedure, section 532," by sec. 2 of the Negotiable Instruments (Interest) Act, XXX of 1926.

Sec. 80. there is no interest mentioned at all. (*a*) If the instrument is silent as to interest, no oral evidence is admissible to prove a contemporaneous agreement to pay at a certain rate; (*b*) but in such cases under the section, silence on this point is equivalent to an agreement to pay interest at six per cent. per annum. (*c*) But, if the defendant admits in his written statement that he orally agreed to pay interest at a certain rate, it was held that the plaintiff could take advantage of the admission and recover at that rate. (*d*) The words "notwithstanding any agreement relating to interest between any parties to the instrument" were substituted for the words "except in cases provided for by the Code of Civil Procedure, section 532". (*e*) Before the amendment, it was held that a plaintiff proceeding under Chapter XXXIX of the Civil Procedure Code of 1882, was not entitled to recover any interest unless such interest is specified in the note itself or to give evidence of any agreement to pay interest. (*f*) The effect of the amendment is that on the one hand, it enables the Court to allow interest at the rate of six per cent. even in summary suits on negotiable instruments, and on the other, it affects all collateral agreements between the parties either as to the rate of interest payable or as to the liability for interest at all. The result is that in all cases where the instrument is silent as to interest, no interest at more than 6 per cent. can be allowed. (*g*) Therefore, the decisions (*h*) recognising such agreements cannot be treated as good law any longer. The date from which interest must be allowed is the date on which the money ought to have been paid which is generally the date of the maturity of the instrument. There is a difference of opinion as to the date from which interest is to be calculated in the cases of instruments payable on demand. In a somewhat early case, (*i*) it was held that the interest should be calculated only from the date of demand. This seems to be the Eng-

---

(*a*) *Best* v. *Haji Muhammad Sait*, 23 Mad. 18; *Bishun Chand* v. *Babu Audh* 2 P. L. J. 451; *Framroz* v. *Essa*, 50 Bom. 266; *Prem Lall* v. *Radha Bullav*, 34 C. W. N. 779; *Khurshid* v. *Ram Ditta*, 107 I. C. 753.

(*b*) *Fathuma* v. *Hanumantha Rao*, 17 M. L. J. 296; *Yado* v. *Behari Lal*, 53 I. C. 242 (Nag).

(*c*) *Thakar Singh* v. *Ishar Singh*, 10 I. C. 847; *Banwari Lal* v. *Jagarnath Prasad*, 1 Pat. L. J. 71; *Ramgopal* v. *Sitaram*, 20 I. C. 319; *Samarendra* v. *Mahadeo*, 63 I.C. 296; *Kanhaiya* v. *Azimullah*, 25 O. C. 69; *Laxmi Bai* v. *Sitaram*, 51 I. C. 106 (where 6% was allowed from date of suit); *Bishun Chand* v. *Babu Audh*, 2 Pat. L. J. 451; *Ganpat* v. *Sopana*, 52 Bom. 88 (F. B.)

(*d*) *Luchmichand* v. *Hemendra*, 18 C. W. N. 1260.

(*e*) Sec. 532 corresponds to O. 37. R. 2 of Act V of 1908.

(*f*) *Bhupati Ram* v. *Sourendra*, 30 Cal. 446.

(*g*) *Lacha Ram* v. *Hemraj*, (1932) Lah. 30.

(*h*) *Ghausiram* v. *Ram Narain*, 29 All. 33 (P. C.); *Rangappa* v. *Bismilla*, 12 N. L. R. 9; *Basanti Bibi* v. *Sheo Mangal Parshad*, 6 A. L. J. 233; *Luchmichand* v. *Hemendra*, 18 C. W. N. 1260.

(*i*) *Best* v. *Haji Muhammed Sait*, 23 Mad. 18, 22.

lish law as well. (*a*) We have in the English Act a clear provision that presentment is necessary for an instrument payable on demand so far as claim to interest is concerned. There is however no corresponding section in the Indian Act, and the present section awards interest from the time when the money due ought to have been paid. Therefore, construing the Indian Act, in the light of sections 19, 21, 22 and also the provisions of section 32, it was held in a Full Bench case, (*b*) that on a note payable on demand, the amount ought to have been paid on the date of the instrument itself. Martin, C. J. pointed out that the words "or bound to pay" in section 32, and "ought to have been paid" in section 80 mean substantially the same thing (*c*). Other courts have taken the same view, (*d*) though Calcutta has followed the Madras view, (*e*) holding that the phrase "the date at which the same ought to have been paid" has no reference to the 'amount due', but "to the interest due thereon." This argument however overlooks the fact that this section has been uniformly applied not only to cases where interest is mentioned and no rate specified, but also to cases where no interest at all is mentioned in the instrument. In the latter case, there is no date at which the interest has to be paid, except by the force of this section.

In contrast to this section where the discretion of the Court is fettered, reference may be usefully made to section 57, cl. (3) of the Bills of Exchange Act, where the Court has got a wide discretion in awarding interest by way of damages. Such damages are generally awardable on an instrument after its dishonour. Till such dishonour, the rate mentioned in the contract is the rate to be allowed, but afterwards, the contract having been broken, damages only can be awarded by the Court. Since the local usages relating to negotiable instruments in an oriental language are saved by section 1 of the Act, it is permissible in a suit on a hundi, to set up and prove a usage for payment of interest at a rate exceeding 6 per cent. notwithstanding the section. (*f*)

Local usages.

The 'explanation' to this section so far as it goes, is in accordance with the English law as it was, before the Bills of Exchange Act, section 57, cl. (1), was enacted. The indorser of a bill or note is liable to pay

Amount to be paid by indorser.

(*a*) *Pierce* v. *Fothergill*, (1835) 2 Bing. N. C. 167; In re, *East of England Banking Coy.*, (1868) 6 Eq. 368, on appeal (1868) 4 Ch. 14; see also 2 Hals. 684.

(*b*) *Ganpat Tukaram* v. *Sopana*, 52 Bom. 88. (F. B.)

(*c*) *Ibid*; *Framroz* v. *Md. Essa*, 50 Bom. 266.

(*d*) *Pentaya* v. *Kesho Rao*, 56 I. C. 249; *Khurshid Huq* v. *Ram Ditta Mall*, (1928) Lah 665.

(*e*) *Prem Lall Sein* v. *Radha Bullav*, 34 C. W. N. 779.

(*f*) *Har Narain* v. *Bihari Lal*, (1932) Lah. 582.

Sec. 81.

interest only from the time he receives notice of the dishonour. It is not apparent why this rule should be restricted to the case of indorsers, and not extended to the case of the drawer of a bill also, whose position is the same as that of the indorser. Under the English law, this rule has been applied to the drawer also. (*a*) The reason why the date of the receipt of the notice of dishonour is taken as the starting point, in the words of Lord Mansfield, is this: "The drawer cannot find out by inspiration who is the holder; and till he finds that out, he cannot pay the bill. When he has found out who is the holder, he is bound to pay the bill within a reasonable time. If he does not, he is liable in damages for not performing his contract. Those damages are the interest on the bill". It is to be noticed that this 'explanation' does not provide for cases where no notice is necessary; nor does it apply to cases where dishonour takes place by non-acceptance. In such cases, the rule in English law was to calculate interest from the date of dishonour. (*b*)

Delivery of instrument on payment or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced to be indemnified against any further claim thereon against him.

NOTES.

Payer to be shown the bill.

The first portion of this section corresponds to section 52, cl. 4 of the Bills of Exchange Act. The provision is primarily intended for the protection of the payer; for the production of the instrument is a means of identifying the person paid, because possession of the instrument by the indorser is *prima-facie* evidence of the possessor being the holder. (*c*) Moreover, the instrument when delivered to the payer, stands as a voucher for his paying the amount. If the holder refuses

And entitled on payment, to delivery of the bill.

(*a*) *Walker* v. *Barnes*, (1813) 5 Taunt, 239.

(*b*) *Harrison* v. *Dickson*, (1811) 3 Camp. 52, (notes); but see B. of Ex. Act, sec. 57.

(*c*) *Muttar Sahib Maraikar* v. *Kadir Sahib Maraikar*, 28 Mad. 544.

to deliver the bill or note, the person bound to pay otherwise, may refuse payment. (*a*) If the holder promises to deliver the bill upon payment, and does not do so after payment, he may be compelled to deliver up the instrument in a suit under this section. Even under the Common Law of England, the rule was the same. (*b*) "The person who demands payment of a bill must produce the bill and offer to deliver it up on payment." Lord Tenterdon says :—"The custom of merchants is that the holder of the bill shall present the instrument, at its maturity to the acceptor, demand payment of its amount, and upon receipt of the money deliver up the bill. The acceptor paying the bill has a right to the possession of the instrument for his own security, and for his voucher and discharge *pro tanto* in his account with the drawer." (*c*) The rule laid down in the section would seem to apply to non-negotiable instruments also, but it is not absolutely necessary for the person paying, to get possession of the instrument, as there is no danger here, as in the case of negotiable instruments, of his being required to pay again to a *bona fide* transferee for value. (*d*) If, on payment, the maker neglects to take back the instrument from the holder, he may be obliged to pay again to a holder in due course, who takes the instrument without knowledge of the payment. (*e*)

Payment of lost bills.

The last portion of the section is enacted in accordance with the spirit of section 87 of the Common Law Procedure Act, 1854 (17 and 18 Vict. c. 12,) which is re-enacted as section 70 of the Bills of Exchange Act. The report of the Select Committee sets out the purpose of the enactment thus :—"We have considered that we should correctly embody the English law by providing that any person liable to pay and paying the amount on lost bills and notes or cheques shall be entitled to be indemnified." The provision in the English Act, is similar to Order VII, Rule 16 of the Civil Procedure Code. (*f*) The English Act says that the Court may order that the loss of the instrument shall not be set up as a defence to a suit upon a lost-bill or note if an indemnity be given, while the order of the Civil Procedure Code empowers the Court to pass a decree in such a suit upon indemnity being given. The Common Law of England was that no suit could be brought upon a negotiable instrument if it was lost ; and the holder could sue even on the original

On indemnity being given.

(*a*) Cf. *Hansard* v. *Robinson*, (1827) 7 B. & C. 90.

(*b*) *Ramuz* v. *Crowe*, (1847) 1 Ex. 167, 174.

(*c*) *Hansard* v. *Robinson*, (1827) 7 B. & C. 90, 94.

(*d*) *Wain* v. *Bailey*, (1839) 10 A. & E. 616.

(*e*) *Muthu* v *Velu*, 4 L. W. 34 ; *Vithal* v. *Indravellu*, 29 I. C. 936 ; but see 36 L. W. (N. R. C.) p. 29 ; see notes to sec. 90 *post*.

(*f*) Act V of 1908.

Sec. 81.

consideration in such a case. (*a*) Even if the destruction of the bill was proved, the Courts would not give relief. But now under the Bills of Exchange Act in England and under the Civil Procedure Code in India, such suits on lost instruments can be brought, and the Court may grant relief upon indemnity being given by the plaintiff. (*b*) Where the maker of a promissory note paid money to an agent to retire it, and the creditor having mislaid the note could not deliver it up, and the money not being paid, the agent became bankrupt, it was held that the maker though still liable to pay the amount of the note, no interest was recoverable after the date of the tender. (*c*) The question whether a suit can be brought upon one half of a note, the other half being lost, is not free from difficulty. To such a case, the provisions in the Civil Procedure Code would seem to apply though it has been held in England that a suit could not be brought on a half-note.(*d*) In giving judgment in the above case, Lord Ellenborough said "Payment can only be enforced at law by the production of an entire instrument or by proof that the instrument or the part of which is wanting has been actually destroyed". The reason urged for the rule is, that the other half may come into the possession of a *bona fide* holder, and in that case the maker of a note or the acceptor of a bill will be liable to two parties at the same time. But it may be argued, and forcibly too, that the person who takes the other half will not generally be a *bona fide* holder, as the half-note is not a regular negotiable instrument and as he would take it at his peril (*e*); and Willis, J., was of opinion that a bank must pay on the production of a half-note without any indemnity, as any person taking a half-note would take it with notice. (*f*)

Scope of the section.

The rule laid dawn in the section goes further than the corresponding section of the English Act (*g*) in its being applicable even to cases of adjustment between the parties without going to Court. It is not clear from the section whether an express deed of indemnity can be claimed by the payer from the holder after payment. It would appear, however, that by the mere fact of payment, the payer becomes entitled to be indemnified when such necessity arises; and so no formal deed of indemnity is necessary or is required under the section.

(*a*) *Hansard* v. *Robinson*, (1827) 7 B. & C. 90; *Crowe* v. *Clay*, (1854) 9 Ex. 604. Cf. *Edwards* v. *Walters*, (1896) 2 Ch. 157.

(*b*) *King* v. *Zimmerman*, (1871) L. R. 6 C. P. 466.

(*c*) *Dent* v. *Dunn*, (1812) 3 Camp. 296.

(*d*) *Mayor* v. *Johnson*, (1813) 3 Camp. 324.

(*e*) Cf. *Mossop* v. *Eadon*, (1810) 16 Ves. 430, 433.

(*f*) *Redmayne* v. *Burton*, (1860) 2 L. T. 324; see *Smith* v. *Mundy*, (1860) 29 L. J. Q. B. 172 (as to the passing of property in half-notes by transmission by post). *Koti Venkataramiah* v. *Official Assignee of Madras*, 33 Mad. 196.

(*g*) B. of Ex. Act, sec. 70.

But, reading this section with the provisions of the Civil Procedure Code, the English Act, and the report of the Select Committee, one may safely infer that the holder may be compelled to give a deed of indemnity.

Does interest cease on refusal to deliver bill?

Another point of some difficulty is whether interest ceases from the time of refusal to deliver up the instrument or to give a deed of indemnity. A tender of money on condition of delivery of the instrument or delivery of a deed of indemnity may not be regarded as a valid tender, so as to stop the interest from running, if we apply the analogy of the English rule, where tender on condition of giving a receipt is not regarded as valid. (*a*) The language of the section may lend some colour to this view, because the person paying is entitled to have the instrument delivered, only upon his paying the amount, and not till then. But one fails to see the reason why such a tender should not be regarded as valid, if the person liable to pay is entitled to refuse payment, if the holder does not or refuses to deliver up the instrument. In this connection, reference may be made to the case of *Dent* v. *Dunn*, (*b*) where the maker of the promissory note paid money to an agent to retire the bill, and the creditor having mislaid the note could not deliver it up, and the money not being paid, the agent became a bankrupt, it was held, that the maker, though still liable for the amount of the note, was not liable for interest after the date of its maturity.

(*a*) *Green* v. *Croft*, (1792) 2 H. Bl. 30; *Narain Das* v. *Abinash*, 44 M. L. J. 728, 731 (P. C.).

(*b*) (1812) 3 Camp. 296.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

Discharge from liability—

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

by cancellation;

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

by release;

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

by payment;

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

NOTES.

This section and the sections following in this chapter, except section 90, deal with discharge of parties from liability on notes, bills and cheques. The discharge of one or more parties to an instrument must be distinguished from the discharge of the bill itself. A bill is discharged when all rights of action thereon are extinguished. It then ceases to be negotiable, and if it subsequently comes into the hands of a holder in due course, he acquires no right of action on the instrument. (*a*) But the discharge of one or more parties to an instrument does not discharge the instrument itself. Thus, an

(*a*) See notes to sec. 90 *post*.

indorser may be discharged as regards a particular party, but not as regards others.

By cancellation intentionally.

If the holder of a bill or note or his agent, intentionally cancels the name of any party on the instrument, with an intention to discharge him, such party is discharged from liability to the holder. (*a*) But, cancellation to have that effect, must be made with the intention of discharging the party, for if it is made unintentionally, or is made under a mistake or without the authority of the holder, it will be inoperative. (*b*) This rule is laid down in a series of cases in England, as where an acceptance was cancelled by a referee in need by mistake, (*c*) or where an indorsement was cancelled by a payer for honour by mistake, (*d*) or where an acceptance was cancelled by mistake by a bank where it was made payable. (*e*)

If the holder knowing of the mistake in cancellation, causes the bill to be noted for non-acceptance, then he is estopped from contending that it was accepted or indorsed under a mistake. (*f*) Where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally or that the cancellation was made by mistake or without authority. (*g*) In all cases, it will be safe for the holder to note on the instrument itself, that the cancellation was made by mistake. From the case of *Warwick* v. *Rogers*, (*h*) we find that it is the usage in London when a cancellation occurred through mistake, to indicate the same by writing on the bill, " cancelled by mistake." When an instrument is allowed by an agent to be cancelled without his principal's authority, the agent is liable for damages. (*i*) The corresponding provision in the Bills of Exchange Act requires that the cancellation should be apparent on the instrument. (*j*) Though the present section is not so clear, still it requires the cancellation to be of the acceptor's or indorser's name, and the acceptance or indorsement should be always on the instrument. The word " signature " would have been better. It

---

(*a*) *Sweeting* v. *Halse*, (1829) 9 B. & C. 365, 369; *Yglesias* v. *River Plate Bank*, (1877) 3 C. P. D. 60, 65 affirmed on appeal (1878) 3 C. P. D. 330; *Ralli* v. *Dennistoun*, (1851) 6 Ex. 483.

(*b*) *Bank of Scotland* v. *Dominion Bank*, (1891) A. C 592; *Prince* v. *Oriental Bank Corporation*, (1878) 3 A. C. 325 (P. C.)

(*c*) *Raper* v. *Birkbeck*, (1812) 15 East, 17.

(*d*) *Wilkinson* v. *Johnson*, (1824) 3 B. & C. 428.

(*e*) *Warwick* v. *Rogers*, (1843) 5 M. & Gr. 340; *Novelli* v. *Rossi*, (1831) 2 B. & Ad. 757; *Castrique* v. *Imrie*, (1870) L. R. 4 H. L. 435; *Prince* v. *Oriental Bank Corporation*, (1878) 3 A. C. 325 (P. C.). See notes to sec. 77, *ante* p. 323.

(*f*) *Sproat* v. *Matthews*, (1786) 1 T. R. 182; *Bentinck* v. *Dorrien*, (1805) 6 East. 199.

(*g*) B. of Ex. Act, sec. 63 (3).

(*h*) (1843) 5 M. &. Gr. 340.

(*i*) *Bank of Scotland* v. *Dominion Bank*, (1891) A. C. 592.

(*j*) B. of Ex. Act, sec. 63 (1).

Sec. 82.

is not clear why under this sub-section, the maker's names should be omitted. His position is the same as that of an acceptor of a bill, and the cancellation of his name will discharge him just as much as in the other cases. The intention to discharge may be evidenced not only by actual cancellation of the name, but also by either tearing up the instrument, (*a*) or by burying it. (*b*) In fact, it seems that any act of the maker *animo cancellandi* will do.

Cancellation, though it destroys the right of the holder on the bill, need not necessarily affect his other rights in the same way, such as, rights arising with reference to a collateral security. (*c*)

Subsequent parties also discharged.

Cancellation of the name of a party on the instrument discharges not only that person, but also subsequent parties who have a right of recourse against the party whose name is cancelled. Thus, a cancellation of acceptance discharges all parties to the instrument, and in such a case, it is virtually the cancellation of the instrument itself; and the cancellation of an indorser's signature discharges the indorsers subsequent to him. But the case of a bill drawn for the accommodation of a drawer or an indorser, stands on a different footing. In the case of a bill drawn for the accommodation of the drawer, cancellation of the acceptor's name discharges the indorser, but not the drawer; nor does cancellation of the drawer's name in the case of a bill drawn for the accommodation of the payee, discharge the payee, as he has no right of recourse against the acceptor in the one case and the drawer in the other. It is not clear from the Act, whether a holder in cancelling a prior party's name, may expressly reserve his rights to charge the subsequent parties so as not to discharge them. Such rights cannot be reserved under the ordinary law relating to contracts, but section 39 of this Act enacts an exception in the case of *contracts* entered into with the acceptor. Cancellation may not be the result of a contract, as it is often an unilateral act. If it be so, section 39 will not apply, and the holder cannot cancel, so as to reserve his rights against subsequent parties. But if the cancellation is the result of an agreement, then he may do so by expressly reserving his rights against subsequent parties. The cancellation as above indicated operates not only against the holder who actually cancels the name of the maker, acceptor or indorser, but also operates as against any person who derives title from him. In this case, it is to be noted, however, that if the subsequent holder took the instru-

Reserving rights in cancelling.

(*a*) *Ingham* v. *Primrose*, (1859) 7 C. B. N. S. 82.

(*b*) *Gilbert* v. *Wetherell*, (1825) 2 Sim. & St. 254.

(*c*) *Yglesias* v. *River Plate Bank*, (1877) 3 C. P. D. 60 affirmed on appeal in (1878) 3 C. P. D. 330.

ment, with the cancellation not apparent thereon, *bona fide*, for value, and before maturity, he will still be entitled to sue all parties to the instrument including the person whose name is cancelled; (*a*) for, if the cancellation be the result of an agreement between him and the holder, the party whose name is cancelled ought to have taken care that the cancellation is clear on the instrument itself, and if it is the act of the holder alone, he has nothing to complain of.

Discharge by agreement.

Discharge may also be effected by agreement between the parties or by operation of law; but it would seem that clause (b) refers to discharge effected by agreement of parties, such as waiver, either express or implied. One instance of such waiver has been already dealt with in clause (a). Renunciation by the holder is another mode. Under the Contract Act, every promisor may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit. (*b*) A mere declaration by the promisee communicated to the promisor, that he dispenses with the performance, is enough to discharge the obligee, and no consideration is necessary to support the discharge; and this rule applicable to all contracts in India applies also to negotiable instruments. Under the Common Law in England, however, a simple contract may be discharged before breach, without release and without satisfaction; but after such breach, there can be no discharge except by a release, *i.e.*, an instrument under seal, or by accord and satisfaction, that is, any agreement to receive something, instead of performance, coupled with actual receipt of the thing so agreed on. But an exception was always recognised in the case of negotiable instruments, when the holder accepts part-payment in discharge of the full amount due. (*c*) Under the Indian Law, part-payment under such circumstances would operate as a valid discharge. (*d*) Even under the English law, such part-payment by way of compromise or composition, or when some new element enters into the contract would be a valid discharge of the whole debt, if it was so agreed on. (*e*)

By renunciation.

There are English cases which insist on the renunciation in order to discharge the acceptor or the maker, to be express and clear, (*f*)

(*a*) *Ingham* v. *Primrose* (1859) 7 C. B. N. S. 82. (where the bill was torn and thrown away which were picked up and pasted together, and the bill was then negotiated.)

(*b*) Ind. Contract Act, sec. 63.

(*c*) Byles (19th Edn.) 236; In re, *Dickinson*, (1909) 101 L. T. 27; but *Parker* v. *Leigh*, (1817) 2 Stark, 228; *White* v. *Bluett*, (1853) 23 L.J. Ex. 36.

(*d*) Ind. Contract Act, sec. 63.

(*e*) Daniel, sec. 1289.

(*f*) *Dingwall* v. *Dunster*, (1779) 1 Doug. 247; see *Farquhar* v. *Southey*, (1826) 2 C. & P. 497; *Edwards* v. *Walters*, (1896) 2 Ch. 157 (C. A.); *Rimalt* v. *Cartwright*, (1924) 93 L. J. K. B. 823.

Sec. 82.

and even under the Bills of Exchange Act, (*a*) the renunciation is required to be in writing, unless the instrument is delivered up; and this strict rule is not extended to the case of the other parties to the bill or note. It is submitted that this strict rule is not applicable in India. The rule in India is that stated by Daniel, that the renunciation must be unmistakably distinct and direct, and not to be inferred from the mere circumstances of delay or silence on the part of the holder. (*b*)

Renunciation under English law should be absolute and unconditional. (*c*) If renunciation is made to depend on the happening of an event, and even if the event happens, the obligee will not be discharged, as it is not an absolute waiver of the rights of the holder; (*d*) and a mere intention to renounce, though contained in a memorandum, will not operate as a valid renunciation. (*e*) But no such restriction seems to apply in India, and the question whether there was a waiver by renunciation or not, will have to be decided according to the circumstances of each case. In England, it has been held that a contract to consider an agreement as annulled, (*f*) or a communication from the holder to the acceptor of an accommodation bill that the business had been settled with the drawer and that he need not trouble himself any further, (*g*) or sending a stamped receipt for principal and interest "in full of all demands," (*h*) operated as a valid waiver of the acceptor's liability. The mere fact of receiving interest from the drawer or keeping a bill for a long time, will not of itself be a renunciation of the liability of the acceptor, (*i*) nor will the extending of the due date of the instrument by granting time, have that effect. (*j*) It is not clear whether under English law, consideration is necessary to support a renunciation. Byles is of opinion that no consideration is necessary, (*k*) but there are definite decisions to the contrary. (*l*) It need hardly be said that if the acceptor of a bill is discharged, the other parties to the bill are also discharged, because the discharge of the acceptor is in effect the dis-

(*a*) B. of Ex. Act, sec. 62.

(*b*) Daniel, sec. 545.

(*c*) B. of Ex. Act, sec. 62 (1); *Whatley* v. *Tricker*, (1807) 1 Camp. 35.

(*d*) *Abrey* v. *Crux*, (1869) L.R. 5 C.P. 37.

(*e*) *George*, In re *Francis* v. *Bruce*, (1890) 44 Ch. D. 627; *Edwards* v. *Walters*, (1896) 2 Ch. 157; *Smith* v. *Gordon*, (1883) 1 Cab. & E. 105.

(*f*) *Walpole* v. *Pulteney*, (1779), cited in 1 Doug. 249.

(*g*) *Black* v. *Peele* (1779), cited in 1 Doug. 249.

(*h*) *Foster* v. *Dawber*, (1851) 6 Ex. 839, 851; *Edwards* v. *Walters*, (1896) 2 Ch. 157, 159.

(*i*) *Farquhar* v. *Southey*, (1826) 2 C. & P. 497.

(*j*) *Pestonji & Co.* v. *Cox & Co.*, 52 Bom. 589 (P.C.).

(*k*) Byles (19th Edn.) p. 236; *Foster* v. *Dawber*, (1851) 6 Ex. 839; Re *Dickinson*, (1909) 101 L. T. 27.

(*l*) *Parker* v. *Leigh*, (1817) 2 Stark. 228; *White* v. *Bluett*, (1853) 23 L. J. (Ex.) 36.

charge of the bill itself. If an indorser is released, he will be discharged from liability, as also those who come subsequent to the one discharged and who have a right to look to the person released for reimbursement on paying the instrument. It is of course open to the holder under section 39 to reserve his right expressly against them, while discharging the indorser. A release by one of two or more joint holders operates as a discharge of the persons who are released even as against the other holder; (*a*) but a release of one of two or more joint acceptors, makers or indorsers does not operate to discharge the others (*b*) though in English law, the rule seems to be otherwise. (*c*) A release granted to the principal debtor on the instrument (*d*) operates as a discharge, but the release must be at or after maturity, for otherwise, though good between the parties, it will not discharge the instrument. (*e*)

The marginal note to clause (b) confines its operation to cases of release only. But a discharge can be effected not only by a release, but also by any agreement between the parties which comes under sections 62 and 63 of the Contract Act. This part of the subject does not require any extended notice, as it properly belongs to the domain of contracts. We shall, however, indicate some of the more common of such agreements which discharge a party from his liability on a negotiable instrument. A general covenant not to sue a party, will operate to extinguish the debt as against him, but will not serve to discharge a party jointly liable with him, (*f*) though it operates as a discharge of the surety. Moreover, such a covenant to operate as a release must be given by all the joint creditors. (*g*) But a covenant not to sue for a limited time (*h*) or an agreement to extend the time for payment, (*i*) will not operate as a release of the principal obligee, though it will discharge the sureties, when such covenant is supported by consideration.

Discharge by accord and satisfaction.

The case of discharge by accord and satisfaction has been already dealt with under section 78 *ante*. A discharge is effected by the holder

(*a*) Cf. *Barber Maran* v. *Ramana*, 20 Mad. 461; *Annapurnamma* v. *Akkayya*, 36 Mad. 544 (F.B.); *Peri Ramasami* v. *Chandra Kottayya*, 47 M.L.J. 840.

(*b*) Ind. Contract Act sec. 44 and see *Ibid*, sec. 138; Cf. *Vellian* v. *Vumidi Sreeramiah*, 29 I. C. 760 (L.B.); *Moolchand* v. *Alwar*, 39 Mad. 548; *Krishna Charan* v. *Sanat Kumar*, 44 Cal. 162.

(*c*) *Nicholson* v. *Revill*, (1836) 4 A. & E. 675.

(*d*) *Foster* v. *Dawber*, (1851) 6 Ex. 839; *Overend Gurney & Co.*, v. *Oriental Financial Corporation*, (1874) L. R. 7 H. L. 348.

(*e*) *Ashton* v. *Freestun*, (1840) 2 Man. & G. 1; *Dod* v. *Edwards*, (1827) 2 C. & P. 602.

(*f*) Addison on Contracts, 175; *Dean* v. *Newhall*, (1799) 8 T. R. 168; *Hutton* v. *Eyre*, (1815) 6 Taunt, 289; *Duck* v. *Mayeu*, (1892) 2 Q. B. 511.

(*g*) *Walmesley* v. *Cooper*, (1839) 11 A. & E. 216.

(*h*) See *Annamalai* v. *Velayudha*, 39 Mad. 129; for discussion, see Appendix.

(*i*) *Cox & Co.* v. *Pestonji & Co.*, 28 Bom. L. R. 1264, affirmed on appeal, 52 Bom. 589. (P. C.)

Sec. 82.

taking anything in satisfaction of the debt due under the instrument. The substitution of another debtor or taking a new security or bill in satisfaction of the old bill, discharges the obligation under the instrument. (*a*) Where the payee of a promissory note agreed to take a sale of the property of the executant and defaulted, and the sale did not become a completed one, it was held, that such an agreement would not wipe out the liability under the promissory note. (*b*)

Discharge by operation of law.

No reference is made in the Act to the discharge of parties by operation of law, probably because, no special reference was thought necessary in a special Act, as such discharge will take place under the general law. Such discharge may take place :—

(1) By an order in insolvency proceedings discharging the insolvent ; or

(2) By merger. When a judgment is obtained against the acceptor, maker or indorser, the debt under the bill is merged into the judgment debt. But a mere judgment obtained against the maker or acceptor without satisfaction, will not discharge the drawer or indorsers. Where the payee of a joint and several note appointed one of the makers as his executor under the will, who after his death took out probate, it was held, that the debt must have been deemed to have been released at the date of the probate, and that he cannot bring an action either at law or in equity against the other executants of the note. (*c*) Again, when a holder takes a higher security, the debt under the bill is merged in the new security, according to the English law. In Indian law, this may not take place, as the doctrine of merger is based on the technicalities of English law ; or

(3) By lapse of time. When the holder waits till the expiry of the period prescribed by the Limitation Act, his remedy to get the money, becomes extinguished under that Act.

Payment.

Clause (c) of the section treats of payment. The effect of the clause is that in the case of instruments payable to bearer, or which have been indorsed in blank, a payment in due course to the person in possession of the instrument, discharges the liability of the party making the payment to all the parties, though the possessor of the bill is not a holder under the Act. (*d*) Payment made to the indorsee's agent, received by him in his capacity as agent, is good dis-

---

(*a*) Addison on Contracts, 179; *Perianan* v. *Kudupoody Mallaya*, 51 I. C. 577.

(*b*) A. S. No. 226 of 25 (Mad. H.C.)

(*c*) *Jenkins* v. *Jenkins*, (1928) 2 K.B. 501.

(*d*) See notes to section 78, *ante*.

charge of a hundi. (*a*) But the payment to be effective, must be made to the agent of the holder presenting the instrument. Thus, where a bearer cheque was sent through a servant to a bank where he was made to wait for payment, but he was told that he was paid, evidently because the payment had been made by mistake to some other person who represented himself as such servant, it was held, that the bank was not discharged and had to pay the money over again. (*b*)

It is to be noticed that the drawer is not mentioned in the section. It is not clear whether the omission is deliberate or not. The rule set out above, applies equally to him.

Discharge by allowing drawee more than forty-eight hours to accept.

83. If the holder of a bill of exchange allows the drawee more than forty-eight hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

NOTES.

The words 'forty-eight' were substituted for the words 'twenty-four' by section 2 of the Negotiable Instruments (Amendment) Act XII of 1921, as the time-limit allowed for acceptance was found to be too short and caused inconvenience and hardship to parties.

Discharge by allowing more than 48 hours.

By section 63, the drawee is entitled to require the holder to present the instrument to him and to be allowed 48 hours within which to deliberate whether to accept or not. Then, it is the duty of the holder who leaves the instrument, to call again and to inquire whether it has been accepted or not, unless the usual course of business between the parties was otherwise. (*c*) After the expiration of the period of 48 hours, the drawee is bound to re-deliver the bill either accepted or unaccepted. (*d*) If the drawee refuses to accept within the 48 hours or if within that period the drawee does not signify his acceptance, the holder must treat the instrument as dishonoured, and must give the necessary notice. If he fails so to do or if he allows the drawee more than 48 hours for deliberation, all prior

(*a*) *Raghunath* v. *Radhakishan*, (1929) Lah. 634.

(*b*) *Lall Chand* v. *Agra Bank Ltd.*, 18 I.A. 111.

(*c*) Cf. *Jeune* v. *Ward*, (1818) 1 B. & Ald. 653, 659.

(*d*) *Bank of Van Diemen's Land* v. *Victoria Bank*, (1871) L. R. 3 P. C. 526, 542.

Sec. 84.

parties are discharged, (*a*) unless they consented to such allowance; but this section does not apply and the drawer is not discharged by the holder leaving the bills with the drawee for more than the allowed time, where the bills were incapable of being accepted or dishonoured by the drawee, and hence no notice of dishonour to the drawer was necessary. (*b*) This period of 48 hours, as has been already noted, is exclusive of public holidays. (*c*) The forty-eight hours rule specified in this section will not apply to all bills of exchange or hundis, but only to bills in which the acceptance by the drawee is obligatory, *i.e.*, a bill of exchange after sight. (*d*) This section does not apply where the hundi is presented not for acceptance but only for payment. (*e*)

When cheque not duly presented and drawer damaged thereby.

84. (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to

(*a*) See *Khan Chand* v. *Golab Ram*, 10 I. C. 133 (as to whether all previous parties include drawer).

(*b*) *Sukhlall* v. *Eastern Bank*, 46 Cal. 584.

(*c*) *Bank of Van Diemen's Land* v. *Victoria Bank*, (1871) L. R. 3 P. C. 526.

(*d*) *Khan Chand* v. *Golab Ram*, 10 I. C. 133; see *Nand Lal* v. *Firm Gulab Rai*, 71 I. C. 610.

(*e*) *Tulshi Ram* v. *Gur Dayal*, 48 I. C. 423; *Ram Dayal* v. *Lalta*, 47 I. C. 683.

the extent of such discharge and entitled to recover the amount from him. **Sec. 84.**

ILLUSTRATIONS.

(a) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

NOTES.

Discharge by non-presentment of cheques.

This section with the illustrations was substituted by section 3 of the Negotiable Instruments (Amendment) Act VI of 1897 for the original section 84 of the Act, and closely follows the wording of section 74 of the English Bills of Exchange Act. The original section was as follows.—"When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder." Cheques, like bills of exchange require to be presented for payment, and only on such presentment and refusal does any cause of action arise as against the drawer. As to within what time a cheque should be presented, section 73 says that it should be presented within a reasonable time after its issue, in order to charge the drawer; such reasonable time being determined, regard being had to the nature of the instrument, the usage of trade and the circumstances of the particular case. It is a question of fact in each case whether the cheque was presented within a reasonable time. (*a*) The fact that the holder does not receive the cheque immediately from the drawer but through a succession of indorsers, does not extend the time within which it is to be presented in order to charge the drawer, the reason being that as cheques are generally intended for immediate payment and not for general circulation, the drawer is not bound to allow a prolonged circulation of the cheque at his own risk, for the sole benefit of the original holder.

(*a*) *East Indian Society* v. *T.M. Nair*, 31 Mad. 364; *Wheeler* v. *Young*, (1897) 13 T. L. R. 468; see notes to sec. 105, *post*.

Sec. 84.

There is also an important distinction as to the effect of the delay or negligence in making due presentment between bills or notes, and cheques. In the case of bills, negligence in presentment or notice absolutely discharges the drawer; but the drawer of a cheque stands on a different footing, and is not discharged, unless he has suffered some loss or injury by such omission or neglect on the part of the holder, (*a*) and even then, only to the extent of such loss. The commonest form whereby loss is occasioned to the drawer is where the bank or banker fails between the time the cheque ought to have been presented and the time at which it is actually presented. In such cases, the law declares that after reasonable time the risk becomes that of the holder, if he permits the deposit in the bank to remain there; but if there is no change of circumstances, and if the holder can show that the drawer has sustained no loss or damage by his omission to present the cheque at an earlier date, the drawer will still be liable to pay the holder. This can be proved by showing that the bank was still solvent and able to pay, or that the drawer at the date of the cheque or at the time when presentment ought to have been made had no funds in the bank, or having funds had withdrawn them, and that the banker was under no obligation to pay the cheque.

Within reasonable time.

To the extent of the loss.

The extent to which the drawer is discharged is the loss or injury he suffers by the neglect of the holder. If at the time the bank fails, the drawer had the full amount of the cheque lodged with the banker for the payment of the cheque, he will be discharged in full; (*b*) but if the sum he drew for, was in excess of the sum he had at the banker's at the date of their insolvency, he suffers damage only in that sum, and to that extent alone will he be discharged. No question of discharge of the drawer arises, if the failure of the bank occurred before the expiry of the reasonable time within which the cheque ought to have been presented. (*c*) The above rule applies, it will be noticed, only to the drawers; and the case of the indorsers will be regulated by the provisions of section 73. In 1897, when this section was substituted, attempt was made to apply this principle to the indorsers also, but the Select Committee rejected that portion of the draft.

The clause defining reasonable time seems to be unnecessary, as the same has been defined under the general section 105. The insertion might have been due to the fact that the present section was copied from section 74 of the Bills of Exchange Act which contains a similar provision.

(*a*) *Robinson* v. *Hawksford*, (1846) 9 Q. B. 52; *Laws* v. *Rand*, (1857) 3 C. B. N. S. 442; *King and Boyd* v. *Porter*, (1925) N. I. 107 (C. A.) [where the cheque was presented nearly 3 years after its date.] Chalmers (10th Edn.) p. 294.

(*b*) Illus. (a).

(*c*) Illus. (b).

Sec. 85

Holder, a creditor.

Clause (3) settles an important point which has been left in an unsettled state before the amendment. When the holder had committed *laches* in making presentment, and the bank failed, not only was the drawer discharged from all liability but the holder himself was left remediless, as by taking a cheque there was no assignment of the money in the banker's hands in his favour, and so he could not sue the banker. But under this clause, the holder is made a creditor of the bank to the extent of the sum to which the drawer is discharged, and he can prove for such amount against the insolvent bank. If, however, the drawer had no funds to his credit in the bank but was allowed to overdraw, Chalmers thinks that the drawer would still be discharged, but that the holder could not prove against the bankers' estate. (*a*) The effect of this clause is thus stated by Falconbridge: " B gives C a cheque for $100 upon a bank where B has sufficient funds, and C does not present it within a reasonable time, nor until after the failure of the bank. The bank ultimately pays a dividend of 40 per cent. to depositors. By reason of the non-presentment of the cheque, B is a creditor of the bank to the extent of $100 more than he would otherwise have been. This is the measure of his damage under the Act, and therefore as between himself and C, he is discharged as to $100, unless the drawer's credit has been used in paying other cheques which would not otherwise have been met; C has, however, the right to rank as a creditor of the bank in his place and to receive the dividend of $40." (*b*)

Cheque payable to order.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

NOTES.

Banker's duty under Common Law.

It has been already pointed out that the relationship of a banker and his customer is that of a creditor and debtor, with a super-added obligation of honouring customer's orders on the funds in his hands. Such orders generally take the form of cheques on the banker, but need not necessarily be so; for it has been held, that a banker paying a bill of exchange payable at his bank has sufficient authority to do so, though there has not been any specific request to pay the acceptance. (*c*) This obligation on his part casts on him onerous duties, as

(*a*) Chalmers, (10th Edn.) 296.
(*b*) Falconbridge on Banking, p. 863.
(*c*) *Kymer* v. *Laurie*, (1849) 18 L. J. Q.B. 218; *Bank of England* v. *Vagliano*, (1891) A. C. 107.

Sec. 85.

regards payment of the customer's moneys in his hands. Before payment, the banker has to ascertain the identity of the person to whom he makes payment, and for that purpose it was said he "may take a reasonable time to make enquiries as to the genuineness of the indorsements on the bills." (*a*) This dictum of Maule, J. in the above case was disapproved of, in *Bank of England* v. *Vagliano*, (*b*) and Lord Macnaghton expressly said therein "it would be out of question for a banker to adopt the suggestion and defer payment until satisfied by inquiry and investigation that all the indorsements in the bill are genuine. This is hardly a practical suggestion. The banker, so very careful to avoid risk, would soon have no risk to avoid." The banker may pay in good faith to the wrong person in circumstances by which the acceptor himself or men of ordinary prudence might have been misled; but the banker cannot take credit for such a payment with the acceptor. This rule may be a harsh one, but it is settled that while the customer agrees to furnish the necessary moneys for meeting the bill, payable at the banker's, the banker undertakes to apply such moneys properly, that is, so as to extinguish the liabilities created by the acceptances. Accordingly, no payment made by the banker which leaves the liability of the acceptor undischarged can be debited to the latter. Especially is this the case, when the banker pays the money negligently. Such negligence will be inferred generally, if the payment is out of the usual course of business. The law, as stated above, is incorporated in section 24 of the Bills of Exchange Act, where it is provided that a forged or unauthorised signature is wholly inoperative, and no right to retain the bill, or to enforce payment or to give a discharge therefor, can be acquired through or under that signature, except in the case of an estoppel.

Banker's duty under the B. of Ex. Act.

This state of the law worked great hardship on the bankers, especially in the case of payment of cheques drawn by customers on their accounts with the banks. Therefore, to facilitate commerce and to obviate serious hindrance to despatch, so essential to banking business and to remove an impediment to negotiability of cheques drawn on banks, the Legislature in England by the Stamp Act of 1853 (16 & 17. Vict. ch. 59, section 19) provided that any draft or order drawn upon a banker, payable to order on demand, may safely be paid by him when presented for payment, if it purports to be indorsed by the person to whom it is drawn payable. This section of the Statute is now reproduced in section 60 of the Bills of Exchange Act, in so far as it relates to bills payable to order on demand drawn on a banker; as to drafts

(*a*) *Robarts* v. *Tucker*, (1851) 16 Q.B. 560.
(*b*) (1891) A. C. 107.

and other orders which are not such bills, they were left to be governed by the Stamp Act till recently, when the Statute 22 & 23 Geo. V. ch. 44, [the Bills of Exchange Act Amendment Act] has placed them in the same position as cheques.

This section 85 of the Indian Act is based upon the above Stamp Act, whose purport and effect may be set out in the following words :—" It is to be remembered that the section deals with two classes of cases where the banker is protected. One is where the indorsement of the payee is forged, and the other is where the agent of the payee without his authority indorses it on behalf of the payee. The purpose of the enactment seems to have been to make the banker free of all responsibility in respect of either the genuineness or the validity of the indorsement purporting to be that of the payee on the one hand or his authorised agent on the other; for, to hold otherwise would be a most serious hindrance to the despatch so essential in banking business, and would create serious impediment to the negotiability of cheques drawn to order on a bank." (*a*).

Difference between the English & Indian sections.

It is just as well to note here the difference between section 60 of the English Statute and this section of the Indian Act. The former refers to a bill payable to order on demand drawn on a banker, whereas the Indian Act refers generally to cheques *i.e.* cheques payable to order or to bearer. The difference is immaterial, for, a cheque is always a bill drawn on a banker, though it may be either to order or to bearer. It would appear, therefore, that in the case of cheques payable to bearer, there is no protection afforded under the English Statute to the banker; but this is not so, for, a banker paying a cheque payable to bearer is doing it in the ordinary course of business, and strictly follows the mandate of his customer (the drawer), and can therefore, charge him with the amount. The customer also is protected, even though the bearer may be a thief having no property in the cheque. (*b*).

Nextly, the section of the Indian Act gives protection to cases of indorsement by the payee only, though the reasoning which applies to the indorsement of the payee applies equally to other indorsements. However, since under cl. 2 of section 16 of the Act, all the provisions relating to a payee are also applicable to an indorsee, it is clear that the

(*a*) See the observations of Cockburn, C.J. in *Charles* v. *Blackwell*, (1877) 2 C. P. D. 151.

(*b*) *Charles* v. *Blackwell*, (1877) 2 C.P.D. 151; *Sulleman* v. *New Oriental Bank Corpn.*, 15 Bom. 267; *Thorappa Devanappa* v. *Umedmalji*, 25 Bom. L. R. 604.

Sec. 85.

protection afforded by this section to the banker, extends also to cases above-mentioned; and to that effect the Bombay High Court has held. (a)

In good faith, and without negligence.

Apart from the differences already noted, there is still another difference more important. Under the Indian Act, it will be noticed, that the banker is protected only if he pays the amount in due course, that is, not only in accordance with the apparent tenor of the instrument but also in good faith and without negligence to a person, under circumstances not affording a reasonable ground for believing that he is not entitled to receive the payment. (b) The corresponding English section provides that the banker must in order to entitle him to protection pay the cheque in good faith and in the ordinary course of business; and under section 90 of the Bills of Exchange Act, a thing is said to be done in good faith where it is done honestly, whether negligently or not. It would seem, therefore, that in English law, however negligent a banker might have been, provided he acts honestly, he will be protected if the payment is one made in the ordinary course of business. In this view, the law in India seems to be stricter than in England, and the protection afforded to the banker is not so wide.

Form of cheques.

As implied in the banker's obligation to honour his customer's cheques, this obligation can be discharged only if the cheque which he honours is, among other things, a legal one, and also regular and unambiguous in form. The banker as a mandatary has a right to insist on having the mandate in a form which is clear and free from ambiguity. (c) If, however, a banker pays a cheque ambiguous in form, and does so on a reasonable mis-interpretation of its terms, the customer cannot complain, for he was responsible for the ambiguity. (d) A banker is not bound to take unusual or exceptional risks; thus, in the case of a cheque containing special indorsements in a foreign language, which the banker does not know, he is entitled to make inquiries and investigate before making the payment. (e) As regards cheques, stale and out of date, the practice of the bankers is to return such cheques, on the ground that they have been presented long after the due date, though there is no justification in law for such a practice. (f) But, the custom has been long established and has to be recognised by Courts as well.

Stale cheque.

(a) *Jugjivandas* v. *Nagar Central Bank Ltd.*, 50 Bom. 118.

(b) Section 10 *ante*.

(c) *London Joint Stock Bank* v. *Macmillan*, (1918) A. C. 777, 814; *Joachimson* v. *Swiss Bank Corpn.*, (1921) 3 K. B. 110.

(d) *Ireland* v. *Livingston*, L.R. (1872) 5 H. L. 395; *Curtice* v. *London City and Midland Bank*, (1908) 1 K.B. 293.

(e) See *Carlisle and Cumberland Bank* v. *Bragg*, (1911) 1 K.B. 489, 496, per Buckley, J.

(f) Paget, p. 185.

Sec. 85.

Bearer cheques.

The position of a paying banker as regards a cheque payable to bearer has been already dealt with. The same rule applies to cheques which may in law be treated as bearer-cheques. (*a*) Payment in due course of an uncrossed bearer-cheque to any one presenting it, discharges not only the banker but also the drawer, if the cheque had been issued and reached the payee; but this protection does not avail the banker, if he pays such a cheque contrary to any statutory enactment, such as paying a crossed bearer-cheque over the counter, in disregard of the crossing. (*b*)

Indorsement, forged or unauthorised.

As regards cheques payable to order, the mandate is fulfilled only by paying to the payee named or to some person to whom he has transferred the instrument by a genuine indorsement. When payments are made by a banker on a forged indorsement or on an indorsement by an agent contrary to instructions or in excess of authority, then, the question of negligence of the banker becomes very important, as such negligence makes the payment one not in due course. It is difficult to conceive or to lay down conditions involving negligence or want of good faith on the banker which is often a corporate body, such as, a joint-stock-bank. Generally, a payment in ordinary course of business will be protected. What is 'ordinary course of business' is a matter for decision in each case, regard being had to the evidence of persons experienced in banking questions. (*c*) The question whether the payment of an order cheque presented without an indorsement, but, indorsed at the request of the bank by the person presenting it, is good or not, is difficult to decide, though it is said that the requirement of an indorsement by the payee on the back of the cheque, before payment by the bank, is not justified. (*d*). It is also said, that the exaction of such an indorsement by the bank mostly for its own protection, will not turn a payment otherwise bad into a good one. (*e*) Payment of a large sum of money of an uncrossed cheque over the counter will not be in due course, especially if the appearance and demeanour of the person receiving payment is such as to excite suspicion. (*f*) But, the payment of a commercial bill over the counter, though infrequent and unusual, has been held not to be irregular under the Law Merchant, as such cases do occur. (*g*) A payment without reference to crossing is also negligent. (*h*)

Payment in due course.

(*a*) *Bank of England* v. *Vagliano* (1891) A. C. 107.

(*b*) *Charles* v. *Blackwell*, (1877) 2 C.P.D. 151; *Smith* v. *Union Bank*, (1875) L. R. 10 Q. B. 291, 296, on appeal (1875) 1 Q. B. D. 31.

(*c*) Cf. *Rickford* v. *Ridge*, (1810) 2 Camp. 537; Paget, p. 206.

(*d*) Paget, p. 116.

(*e*) Paget, p. 117.

(*f*) *Bank of England* v. *Vagliano*, (1891) A. C. 107; *Auchteroni* v. *Midland Bank*, (1928) 2 K. B. 294.

(*g*) *Ibid*, (1928) 2 K. B. 294.

(*h*) See sec. 129.

Sec. 85.

Irregularity in indorsement.

A patent irregularity in the indorsement cannot be disregarded and overlooked by the banker. The indorsement should correspond to the name as written and spelt in the body of the instrument; and the payment of a cheque where there is a substantial variation in the name of the payee and in the indorsement, cannot be taken to be a payment in due course. Thus, where a cheque originally drawn "Pay J. P. & Co. or order" leaving a space between the words "Co." and 'or,' was subsequently altered into "J. P. & Co., per C. & P. or order," was presented for payment and was honoured by the bank, it was held, that apart from the question of alteration, the indorsement of C & P. without that of J. P. & Co., was irregular and invalid, and that the bank was negligent in paying the cheque, and so was not protected. (*a*)

Negligence: instances.

Similarly, a payment before the due date cannot be said to be a payment in due course, (*b*) nor the payment of a cancelled cheque in circumstances such as to excite suspicion, (*c*) nor the cashing of a lost cheque, negligently to a stranger who wrote in an illiterate hand on the bill without any inquiry as to his address etc., can be said to be good payment. (*d*) The bank was held liable in the last case to the true owner, though he had not given due notice of the loss. Again, payment of a cheque after countermand is clearly a case where the banker is not entitled to protection. (*e*) The countermand must have come to the knowledge of the bank, (*f*) and must also be clear. Thus, where the customer on the 1st of August telegraphed to the banker to stop payment of cheque No. 117283 for £ 8 and odd to Pote, and on August 2nd, telephoned to the cashier that it was due for presentment that day, and where, on the 6th of August, a cheque dated the 2nd of August bearing No. 117285, but for the same amount and payable to the same person was presented for payment, the manager and the cashier consulted each other and finding the difference in numbers and that the date was subsequent to the date of countermand, decided to honour the cheque, it was held by Viscount Dunedin in the House of Lords, that the bank was right in doing so. "It must be remembered that a bank would be sued just as much for failing to honour a cheque as for cashing one which had been stopped, and that the number of the cheque was one item of identification." (*g*) The

(*a*) *Slingsby* v. *District Bank* (1932) 1 K. B. 544, over-ruling (1931) 2 K. B. 583.

(*b*) *Morley* v. *Culverwell*, (1840) 7 M. & W. 174.

(*c*) *Scholey* v. *Ramsbottom*, (1810) 2 Camp. 485.

(*d*) *Strange* v. *Wigney*, (1830) 6 Bing. 677.

(*e*) *Twibell* v. *London Suburban Bank*, (1869) W. N. 127.

(*f*) *Curtice* v. *London City and Midland Bank*, (1908) 1 K. B. 293.

(*g*) *Westminster Bank* v. *Hilton*, (1926) W. N. 332 (H.L.)

learned Judge also thought "that the view of the officials that the cheque might have been a duplicate one and they were bound to cash it", was correct. The bank has further to see whether there are any alterations in the cheque, and whether they have been properly authenticated. Therefore, where an alteration in a cheque is initialled not by all the drawers but only by some of them, the bank will be paying the amount on the said cheque at its own risk. (*a*)

Directions to be strictly complied.

The banker has the further duty cast on him of paying the amount strictly in accordance with the direction given about the disposal of the monies payable under the cheques presented. So, where a company required its bankers from time to time to issue bank-drafts payable to constituents in foreign countries for the amounts of the cheques issued by the company, and where the bank without taking due care, issued bank-drafts in certain cases in the name of the manager of the company, misled thereto by the fraudulent acts of the manager, it was held that payment under those circumstances was not binding and that the bankers had acted negligently and were liable in damages. It was further held, that frequent repetition of the same irregular procedure afforded no ground for estoppel or ratification. Neglect of duty does not cease to be such by repetition (*b*).

Payment to improper person.

It has also been held, that a banker has, in order to discharge himself, to pay the amount to the holder, his servant or agent. Thus, where the payee of a certain cheque sent his servant for receiving payment of a cheque, and the officials of the bank took the cheque from him and made him wait for some time and he was ultimately told that it was paid, and on the evidence it was found that he was not paid, but by mistake or inadvertence the amount might have been paid to a wrong person, it was held that the bankers were not discharged and were liable to pay over again. (*c*)

Payment to an agent.

Similarly, where a bank pays to, or collects money on behalf of a person as the agent of another, it has to take care to see that the agent acts within the extent of his authority. Thus, where a person authorised under a power-of-attorney to draw cheques on the customer's account, drew and paid them into his own private accounts, the bankers who paid and collected the same were guilty of negligence, as they had notice that the principal's moneys were being utilised

---

(*a*) *Kepitigalla Rubber Estates Ltd.* v. *National Bank of India*, (1909) 2 K. B. 1010, per Bray, J.; *Souchette* v. *London County & Westminster Bank*, (1920) 36 T.L.R. 195.

(*b*) *Bank of Montreal* v. *Dominion Gresham Guarantee Co.*, (1930) A. C. 659.

(*c*) *Lall Chand* v. *Agra Bank*, 18 I.A. 111.

Sec. 85.

Payment to directors of companies.

by the agent for his own purpose (*a*). Such cases frequently occur in the case of companies, which have necessarily to act through their directors and officers, who in fraud of the company either forge cheques or draw them unauthorisedly. Even if the directors of the company confirm the transaction relating to such cheques, the company has been held not to be estopped from recovering the amount from the paying bank. (*b*) In the case of cheques issued by companies, the bank has to take care to see that the person drawing the cheque has the necessary authority to do so. When cheques are to be drawn by at least two of the directors, but the bank negligently and contrary to the directions, paid cheques signed by one of them and also paid cheques signed by two directors, one of them a new director as to the validity of whose appointment, the bank though put on inquiry, did not investigate the position, it was held that the bank was liable to the company for the amount of the cheques paid; but its liability was relieved on equitable grounds, as the cheques went in payment of trade creditors of the company, whose liabilities were therefore not increased by the payments and as the bank was entitled to stand in the place of the creditors so paid-off. (*c*)

Negligence of drawer.

Thus, it will be seen that the rule is well established that ordinarily, the banker on whom a cheque is drawn must not only ascertain at his peril, the identity of the person named in the cheque entitled to payment, but also the authority of the person receiving payment if he is acting as agent; but when an improper payment is made by the fact of the banker having been misled by some negligence or other fault on the part of the drawer, then, he can set up such negligence as a defence, and secure the protection under the section; but to do so, he must not himself be negligent. It is perhaps unnecessary to say that this section, like the corresponding section 60 of the English Act, does not extend any protection whatever to a banker, when the customer's signature as drawer is forged, as such cheque is no cheque at all, (*d*) and, as it is said the bank ought to know its customer's signature (*e*).

Forgery of drawer's signature.

(*a*) *Reckitt* v. *Barnett*, (1929) A. C. 176; *London & Montrose Ship Building Co.* v. *Barclays Bank*, (1926) 31 Com. Cases 67; *Lewes Sanitary Steam Laundry Co.* v. *Barclay Bevan & Co.*, (1906) 11 Com. Cas. 255; *Morison* v. *London County & Westminster Bank*, (1914) 3 K. B. 356; *Lloyds Bank* v. *Chartered Bank*, (1929) 1 K. B. 40.

(*b*) *Kepitigalla Rubber Estates Ltd.* v. *National Bank of India*, (1909) 2 K. B. 1010. Contra, *Corporation Agencies Ltd* v. *Home Bank*, (1927) A. C. 318; see the notes to section 131 *post*.

(*c*) *Liggett* v. *Barclay's Bank*, (1928) 1 K. B. 48

(*d*) *Imperial Bank of Canada* v. *Bank of Hamilton*, (1903) A. C. 49.

(*e*) *Charles* v. *Blackwell*, (1877) 2 C. P. D. 151; but see *London and River Plate Bank* v. *Bank of Liverpool*, (1896) 1 Q. B. 7, 10; Paget, p. 172.

Sec. 85.
Duty of a customer.

Prior to 1918, there was a certain amount of uncertainty in the law as to the existence and extent of the duty of a customer towards his bank in the drawing up of his cheques, so as not to invite or facilitate forgery or fraudulent alteration. As early as 1827, it was decided in *Young* v. *Grote*, (*a*) that if the drawer draws a cheque as to render it easy for a forger to make alterations, the drawer was bound to bear the loss, and not the bank. This was criticised in later cases, and an attempt was made in *Scholfield* v. *Lord Londesborough*, (*b*) to extend this rule to bills of exchange, but it was unsuccessful. In the above decision, the case of *Young* v. *Grote*, (*c*) was much criticised; but finally in 1918, the House of Lords rehabilitated the case of *Young* v. *Grote* (*d*) after an elaborate discussion of all the previous cases. It was clearly laid down therein, that a customer is bound to exercise reasonable care to prevent the banker from being misled, and if in breach of such duty, he draws a cheque in a manner which facilitates fraud, he is responsible for the loss, as a natural and direct consequence of his act. (*e*) But difficulty arises because of the case of *Colonial Bank of Australasia* v. *Marshall*, (*f*) where the Privy Council decided that the mere fact that a cheque is drawn with spaces left, so that a forger can utilise them for purposes of forgery is not in itself a violation of the duty of the customer to the bank and there was no negligence on the part of the customer. This decision may not be binding on English Courts as being opposed to *London Joint Stock Bank* v. *Macmillan*. (*g*) But it will have a binding force in all the Dominions, where the Privy Council exercises jurisdiction.

This duty of the customer to the banker does not apply in all its rigour to bills; and a distinction has been always maintained in English law between bills and cheques on this point. This is pointed out clearly in the case of *Auchteroni* v. *Midland Bank*. (*h*) This distinction is based on the principle that the duty of the customer to the bank in the case of a cheque, arises directly out of the contractual relationship, but there is no such connection between the drawer or acceptor and the possible future indorsees of the bill. How far this distinction is applicable in India in view of section 89, is discussed under that section. Negligence on the part of one will ordinarily give rise to an estoppel, if the neglect be in or connected with the transaction between himself and the other, and be the proximate cause of the detriment to the other. But negligence which merely tends to facilitate the forgery, will not debar the negligent

(*a*) (1827) 4 Bing. 253.
(*b*) (1896) A. C. 514 (H. L.); see also *Adelphi Bank* v. *Edwards*, quoted in (1896) A. C. at 540.
(*c*) (1827) 4 Bing. 253.
(*d*) *Ibid.*
(*e*) *London Joint Stock Bank* v. *Macmillan*, (1918) A. C. 777.
(*f*) (1906) A. C. 559
(*g*) (1918) A. C. 777 (H. L.)
(*h*) (1928) 2 K. B. 294.

Sec. 85.

person from repudiating the document and disclaiming liability for any loss. (*a*) Because, the basis of an estoppel arising by negligence is the neglect of some duty that is owing to the person misled or to the generality of the public, and not merely neglect of what would be prudent or of some moral duty. (*b*) The ordinary duty of a customer of a bank when issuing mandates to the bank, is to take reasonable care so as not to mislead the bank. Beyond that, and the care he is expected to take in the transaction itself, there is no duty cast on him to take precautions in the general course of carrying on of his business, to prevent forgeries on the part of his servants. (*c*) And the fact that the customer has allowed payments upon forged cheques to be debited against him in his pass-book, without objection, will not debar him from disputing such payments. (*d*) If a customer is negligent in the mode of drawing the cheque so as to admit of an interpolation of additional words or figures, he cannot be heard to complain of a *bona fide* payment of the altered cheque; (*e*) or if the customer by an act or omission or neglect of some act, usual in the course of business, induces the banker to act upon a document, he should not be permitted to take advantage of his own act or omission to the prejudice of the banker. Innocent persons are not held responsible for not taking measures to prevent the commission of a crime which they had no reason to anticipate, but they will become bound to use such precaution, either by agreement or implication established by law. (*f*) In a Bombay case, the manager of a firm signed blank drafts on a bank, and left them with his accountant pending instructions as to their issue. The drafts so signed, indicated that they were to be issued from a branch of the firm at one place, but they were altered and filled in without authority, and were issued from another branch of the firm. It was held that the signer had no intention of issuing the drafts from the other branch of the firm, and he was not estopped from denying their genuineness. The Court was prepared to apply the principle that where one of two innocent parties must suffer a loss, that party should suffer whose negligence was the proximate cause of the loss. It was further held that the signing of the drafts as above, was not negligence sufficient to prejudice the signer's claim. He was held to be entitled to rely upon the

(*a*) *Colonial Bank of Australasia* v. *Marshall*, (1906) A. C. 559; *Arnold* v. *Cheque Bank*, (1876) 1 C.P.D. 578.

(*b*) *Bank of England* v. *Vagliano*, (1891) A. C. 107.

(*c*) *Kepitigalla Rubber Estates Ltd.* v. *National Bank of India* (1909) 2 K. B. 1010; *Lewes Sanitary Steam Laundry Co.* v. *Barclay, Bevan & Co*, (1906) 11 Com. Cas. 255.

(*d*) *Ibid*; *Walker* v. *Manchester etc., Bank*, (1913) 108 L. T. 728.

(*e*) *London Joint Stock Bank* v. *Macmillan*, (1918) A. C. 777, 795, 801; see also the notes to sections 89 & 131, *post*.

(*f*) *Kepitigalla Rubber Estates Ltd.* v. *National Bank of India*, (1909) 2 K. B. 1010.

honesty of his servants, and such negligence he was guilty of, was not the proximate cause of the loss, and that it was not a negligence in the actual transaction, but in a matter collateral to the transaction, and the proximate cause of the loss being not the negligence but the supervening forgery. (*a*) The standard of care that a bank should take, ought not be measured by a consideration of all the precautions which subsequent events might suggest. Where a bank on the instructions of its client to send a sum of money to Rumania, sent a cheque by registered post to him, which however was stolen on the way and cleared through a bank by means of a forged indorsement, and the bank debited the amount to the customer, it was held in an action by the customer based on the allegation that the cheque must have been sent insured as well, that the bank was not liable. (*b*) The post offiice is the recognised means of transmission of cheques or drafts, and if in the course of such transmission, the cheque is stolen and the thief gets payments by means of forged indorsements, the bank is liable and not the drawer or the holder. (*c*) Even in India, the same view is taken, even though the cheque was sent without a request, express or implied, to send it by post. (*d*) Should a customer be aware of a forgery whereby his banker has debited his account, but fails to inform him of it till the chances of recovery from the forger have been materially prejudiced, it was held that the customer was precluded from disputing the signature and claiming the amount. (*e*) But, if the person kept silent at the request of an agent of the bank in the honest belief that it was to its interest, he is not estopped from setting up the forgery. (*f*)

Drawer too discharged.

Is the drawer of a cheque discharged by a payment of the banker under the circumstances mentioned in the section ? The corresponding provision of the English Act says that payment by the banker is deemed to be payment in due course, which again is said to have the effect of discharging the bill. (*g*) So, the drawer or the indorser is discharged completely from his liability, and the *de jure* holder cannot sue him for the amount due. The language of the Indian Act is quite different, and it says that the drawee is discharged. The argument that the discharge of a principal, *ipso facto* discharges the surety, cannot be called in aid, as the drawer of a cheque is not a surety but the

(*a*) *Punjab National Bank Ld.* v. *Mercantile Bank of India Ld.*, 36 Bom. 455 ; see also *London Joint Stock Bank* v. *Macmillan*, (1918) A. C. 777.

(*b*) *Ose Gesellschaft* v *Jewish Colonial Trust*, (1927) 43 T. L. R. 398.

(*c*) *Arnold* v. *Cheque Bank*, (1876) 1 C. P. D. 578.

(*d*) *Jugjivandas* v. *Nagar Central Bank*, 50 Bom. 118.

(*e*) *M'Kenzie* v. *British Linen Co.*, (1881) 6 A. C. 82 ; *Greenwood* v. *Martins Bank Ltd.*, (1932) 1 K. B. 371 ; see also the notes to sec. 58, p. 264.

(*f*) *Ogilvie* v. *West Australian Mortgage and Agency Corporation*, (1896) A. C. 257 ; *Imperial Bank of Canada* v. *Bank of Hamilton*, (1903) A. C. 49.

(*g*) B. of Ex. Act, secs. 59 & 60.

Sec. 85 A.

principal debtor. However, under section 30, the drawer is bound to compensate only in case of default by the drawee, and the drawee (banker) cannot be said to be in default, by a payment as that mentioned in the section, for he is authorised by the Statute to pay to a man who derives title even through a forged indorsement. Thus, the conclusion is reached that the drawer also is discharged, and it was so held by Sargent, C. J., who, in deciding the case, expressed regret that "on a question of so much importance to the commercial world, the answer should not be found in an express provision, but should be left to be inferred by a process of reasoning." (*a*)

Drafts drawn by one branch of a bank on another payable to order.

85 A. Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.

NOTES.

Bankers' drafts.

This section was newly added by the Act XXV of 1930. The object is to amend the Act so as "to make it clear that it affords protection to bankers in India against forged or unauthorised indorsements on demand-drafts, drawn by one branch of a bank upon another branch of the same bank. A doubt has been expressed in authoritative quarters as to whether the Indian Law as it stands at present, extends the same protection to banks in India, as the English Law does to banks in England, and consequently Legislation is considered to be expedient in order that the position may be established beyond all doubt." In England, banker's drafts including demand-drafts drawn by one branch on another branch of the same bank, were governed by the Stamp Act of 1853 (16 & 17 Vict. ch. 59, section 19). But recently, the Bills of Exchange Act itself has been amended so as to make the provisions of sections 76 to 82 of that Act dealing with the protection of bankers, to apply to banker's drafts, *i.e.*, drafts payable on demand, drawn by or on behalf of a bank upon itself, whether payable at the head-office or some other office of the bank. (*b*)

The amendment in England has the curious effect of affirming the decision of Bailhache, J., in *Ross* v. *London County and Westminster Bank*, (*c*) that a banker's draft is a cheque within the meaning of the

(*a*) *Sulleman Hussein* v. *The New Oriental Bank Corporation, Ltd.*, 15 Bom. 267, 279; *Jugjivandas* v. *Nagar Central Bank, Ltd*, 50 Bom. 118.

(*b*) 22 & 23 Geo. V. ch. 44.

(*c*) (1919) 1 K. B. 678, 687.

Bills of Exchange Act, although it has been recognised that the decision was an error, and was given without reference to the view of the House of Lords in *Gordon's case*, (*a*) one of the rare instances of a decision given by inadvertence. By the amendment, the decision in *Ross's case* (*b*) is recognised as right in practice, though hitherto wrong in law. It would seem therefore, that section 19 of the English Stamp Act, 1853 (*c*) has now become unnecessary, and should be repealed.

Sec. 86.

Parties not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(b) where it undertakes the payment of part only of the sum ordered to be paid;

(c) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

(*a*) (1903) A. C. 241.
(*b*) (1919) 1 K. B. 678.
(*c*) 16 & 17 Vict. ch. 59.

Sec. 86.

NOTES.

The holder of a bill is entitled to require an absolute and unconditional acceptance, *i.e.*, an acceptance according to the tenor of the bill. Unless it be so accepted, he may treat the bill as dishonoured and protest it accordingly. (*a*) It is, however, competent for him to take a qualified acceptance, but if he does so, he does it at his own risk, and discharges all parties prior to himself, unless he obtains their consent. This result logically follows from the nature of the contracts of the drawer and of the indorsers. The drawer or the indorser on the bill contracts that when a bill is presented to the drawee, he will undertake to pay according to its tenor by accepting it; and if he does not do so, the drawer or the indorser, as the case may be, will pay the bill according to its terms. By taking a qualified acceptance, the holder varies the contract of the drawer and the indorsers, and no one can be compelled to be bound by a contract different from the one which he has assented to.

Qualified acceptance discharges parties not consenting.

Acceptance is qualified :—

Acceptance conditional.

(1) When it is conditional, that is to say, when the acceptance makes the payment of the money dependent upon the happening of an event. (*b*) Such condition if acquiesced in by the holder, will bind him as well as the acceptor, but not the other parties on the bill not consenting thereto. When the drawee accepts a bill thus, "accepted payable on giving up bills of lading for 76 bags of clover per ship A at the L. & W. Bank," (*c*) or where he accepts it, "payable when in funds," (*d*) or "to pay when a cargo consigned to me is sold," (*e*) or "to pay as remitted from thence at usage," (*f*) or even, "to pay by another bill," (*g*) such acceptance is a conditional one. On the offer of such a conditional acceptance, if the holder resolves to reject it, he may give general notice of non-acceptance; and if he is willing to take it, he must give notice to all parties of the exact terms of the offer, and of his readiness to accept the same. When the condition is accepted, care must be taken to make it appear on the instrument itself; otherwise, it cannot be availed of against an innocent indorsee for value. (*h*) If the condition is contained in a separate piece of

(*a*) Sec. 91, *post*; B. of Ex. Act, sec. 44 (1). Cf. *Boehm* v. *Garcias*, (1807) 1 Camp. 425.

(*b*) *Cf.* B. of Ex. Act, sec. 19 (2) (a)

(*c*) *Smith* v. *Vertue*, (1860) 30 L. J. C. P. 56.

(*d*) *Julian* v. *Shobrooke*, (1753) 2 Wils, 9.

(*e*) *Mendizabal* v. *Machado*, (1833) 6 C. & P. 218; *Smith* v. *Abbott*, (1741) 2 Stra. 1152.

(*f*) *Banbury* v. *Lissel*, (1744) 2 Stra. 1211.

(*g*) See *Russell* v. *Phillips*, (1850) 14 Q. B. 891.

(*h*) *Bowerbank* v. *Monteiro*, (1813) 4 Taunt. 844.

paper, it will be binding only as between the immediate parties. No oral condition, even if contemporaneous, is admissible to control a contract clear on the instrument. (*a*)

Partial acceptance.

(2) When it is partial, *i.e.*, when it undertakes to pay part only of the sum ordered to be paid by the drawer. In this respect, there is an important distinction between the English and the Indian law. In English law, if the drawee accepts for a part of the amount drawn for, it is a good acceptance as to such part ; or if accepted partly in money and partly otherwise, such as in goods and bills, it is a good acceptance so far as the part made payable in money. The holder in either case may take such partial acceptance and give notice to the drawer and indorsers as to the residue. (*b*) But under the Indian law, acceptance as to part only of the sum due, if acquiesced in by the holder, will discharge all prior parties not consenting to such an arrangement.

Acceptance qualified as to place.

(3) When it is qualified as to locality, *i.e.*, when it is to pay only at a particular place, or to pay at a place different from the place mentioned in the instrument, and there only. When there is no place mentioned in the instrument itself, if the acceptance makes the money payable at a particular place, it will be treated as a general acceptance; (*c*) but where it expressly states that the bill will be paid at the place noted in the acceptance, and not otherwise or elsewhere, it will be a conditional acceptance, conditional as to the place of payment, which the holder will be entitled to refuse. Thus, if the drawee of a bill accepts it "payable at S. & Co. bankers," it will be a general acceptance; (*d*) but if he says in accepting, "payable to U Bank and not elsewhere", (*e*) the acceptance is qualified, and presentment at the banker's, will be held as a condition precedent to the right of the holder to sue the acceptor. Again, if there is a place of payment mentioned in the instrument itself, it is not open to the acceptor to say that he will pay at some other place only. But, an acceptance to pay at a particular place, though different from that mentioned in the instrument, does not make the acceptance a qualified one ; if the acceptance, however, goes further and says that he will pay it only there, and not elsewhere, it becomes a qualified one. This point is not, however, clear from the section 19 (2) (c) of the Bills of Exchange Act, though under the present section there cannot be any doubt about it.

(*a*) *Hoare* v. *Graham*, (1811) 3 Camp. 57. See Appendix.

(*b*) B. of Ex. Act, sec. 44 (2); *Wegersloffe* v. *Keene*, (1719) 1 Stra. 214. Cf. *Rowe* v. *Young*, (1820) 2 Bligh. 391.

(*c*) B. of Ex. Act, sec. 19 (2) (c).

(*d*) *Halstead* v. *Skelton*, (1843) 5 Q. B. 86.

(*e*) *Ibid.*

Sec. 86.

Acceptance qualified as to time.

(4) When it is qualified as to time, that is to say, when the acceptance makes the money due, payable at a time different from that mentioned in the order of the drawer. This is clearly a variation of the contract of the drawer and the indorsers and will surely discharge such parties, unless they consent to the variation proposed by the acceptor. (*a*) This qualification may be introduced by a promise to pay at a time shorter or longer than that mentioned in the order; in either case, it is a variation of the contract discharging prior parties not consenting. So, where a bill was accepted on the condition of renewing it to a certain other time, it was held that the acceptance was qualified as to time, as the word 'renewed' is to be read so as to mean an extension of the time originally fixed. (*b*) Where a bill, dated the 8th of April, had no time fixed for payment, and was accepted by the defendant on the 18th of April "payable on the 8th of September," such an acceptance is a qualified acceptance, for by section 19 of this Act, a bill or note in which no time is fixed for payment is payable on demand, and by fixing a date in the acceptance, there is a variation as to the time when the bill is to be paid.

Acceptance by some only of the drawees.

(5) When the bill is drawn on two or more drawees and is accepted by one or some of them, but not by all. If a bill is drawn on two or more persons not partners, acceptance is not complete, unless all of them sign their acceptance to the bill, and if one of such several drawees makes default in acceptance, upon duly being required to accept, the bill is said to be dishonoured, and the holder has the right of recourse against the drawer and indorsers. If the drawers are partners, acceptance by one will be treated as the acceptance of all, and no presentment to each of them is necessary.

The instances of qualified acceptance given in the section are not exhaustive. If the holder takes an acceptance whereby payment by goods or bank-notes or in a different currency is agreed on by the holder, the acceptance becomes a qualified one, and the drawer and the indorsers are discharged.

Qualification to be apparent.

"To qualify an acceptance, the acceptor must do so on the face of the bill in clear and unequivocal terms by plain and intelligible language in such a manner, that any person taking the bill cannot fail to understand, that it was accepted subject to an express qualification. It is further necessary for the general convenience of trade and conduct of mercantile affairs, which demand for the transaction, convenient and compendious forms, that any qualifications

---

(*a*) *Paton* v. *Winter*, (1809) 1 Taunt. 420.

(*b*) *Russell* v. *Phillips*, (1850) 14 Q. B. 891.

sought to be introduced in an acceptance, must be made sufficiently part of the acceptance itself so as to be intelligible in the ordinary course of business." Stated as a rule, it is clear enough; but difficulty arises in its practical application, as to which, even the Judges of the highest Court of Appeal differ from one another.(*a*) Whether the acceptance is conditional or not is a question of law to be determined according to the circumstances of each case.(*b*)

Assent of parties to qualification.

As already remarked, the general effect of a qualified acceptance may be avoided by the assent of parties who would be affected by such acceptance. That such consent may be given prior or subsequent to the acceptance is clear under the English law, (*c*) and the same rule may be gathered from the wording of this section. Besides, the assent under the English law need not be express. If the drawer or the indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time communicate his dissent to the holder, he shall be deemed to have assented thereto. (*d*) But, whether there can be an implied assent by silence on notice given by the holder is extremely doubtful under the Indian law. It is conceived, however, that though the assent need not be in express terms, there must at least be some act on the part of the drawer or indorser from which such assent can be gathered. A mere passive act of silence will not do under the Indian law.

Effect of material alteration.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

(*a*) *Meyer & Co.* v. *Decroix*, (1891) A. C. 520, on appeal from (1890) 25 Q. B. D. 343.

(*b*) *Ibid*; *Sproat* v. *Matthews*, (1786) 1 T. R.182.

(*c*) B. of Ex. Act, sec. 44 (2).

(*d*) B. of Ex. Act, sec. 44 (3).

Sec. 87.

NOTES.

Material alteration avoids the instrument.

It is a broad principle of law that any change in a written instrument which causes it to speak a different language in legal effect from that which it originally spoke, namely, which changes the legal identity or character of the instrument either in its terms or in the legal relation of the parties to it, is a material change, or technically, an alteration; and such a change will invalidate the instrument against the persons not consenting to the change. (*a*) This principle of law is essential to the integrity and sanctity of contracts, and is founded on sound sense; it is calculated to prevent fraud and deter men from tampering with written securities; and it would be directly repugnant to the policy of such law to permit the holder of a bill to attempt a fraud of this kind with impunity, which would be the case if, after being detected in the attempt, he were not in a worse position than he was before. (*b*) Moreover, by the alteration, the identity of the instrument is destroyed, and to hold one of the parties liable under such circumstances would be to make for him a contract which he never agreed to. The Contract Act contains no provision on the subject, but this principle has been recognised to be of such universal application that even after the Act, it has been held to be applicable in India. (*c*) This principle has been applied to negotiable instruments on the ground that the rule stands on a broad ground of policy, and if any difference is to be made between bills of exchange and deeds, it should rather be to enforce the rule with greater strictness as to the former. Now the matter is beyond dispute, for this provision is embodied in section 64 of the Bills of Exchange Act in England and in the present section of this Act.

Even when made by a stranger.

This rule is applicable not only where the alteration is made by him "that hath the deed, but also where it is made by any other whomsoever; for, the person who has the custody of the instrument is bound to preserve it in its integrity, and if altered by himself or by a stranger, it would be avoided against the party bound thereby". (*d*) This rule is perhaps hard on the owner of the instrument, if, without any complicity on his part, the instrument is altered and he were made to suffer for it. The hardship was recognised, and in the original draft of the bill, an exception was sought to be introduced in the Act,

(*a*) *Gour Chandra* v. *Prasanna Kumarchandra*, 33 Cal. 812, 816; *Moheshchunder* v. *Kamini Kumari*, 12 Cal. 313.

(*b*) *Master* v. *Miller*, (1791) 4 T. R. 320; *Baru Mal* v. *Dwarka Dass*, 25 I C. 667.

(*c*) *Gogun Chunder* v. *Dhuronidhur*, 7 Cal. 616; *Atmaram* v. *Umedram*, 25 Bom. 616.

(*d*) *Master* v. *Miller*, (1791) 4 T. R. 320; *Davidson* v. *Cooper*, (1844) 13 M. & W. 343; *Gogun Chunder* v. *Dhuronidhur*, 7 Cal. 616.

which subsequently, however, was not done. In America, an alteration by a stranger, though material, will not avoid a bill or note. (*a*)

The corresponding section of the Bills of Exchange Act is considered by the Judicial Committee of the Privy Council in *Hong-kong & Shanghai Banking Corporation* v. *Lo Lee Shi*, (*b*) and it was held that the history of the law and the terms of the section itself showed that it related only to alterations effected by the will of the person by whom or under whose directions they are made and that it did not apply to a change due to pure accident, such as a document being mutilated and effaced by the wash and ironing of the garment in which it was left, (*c*) or by the ravages of white ants, (*d*) or the seal of a deed being torn-off by a child or eaten off by rats or burnt by the hot end of a cigarette. The above Privy Council decision has been adversely criticised in the Law Quarterly Review of October 1928 at page 401, and the article concludes thus: "That the interpretation given to section 64 by the Privy Council is a desirable one from the standpoint of pure justice is hardly open to question. But with all respect, it is more doubtful whether it is equally conclusive as a piece of grammatical construction." For the section strictly construed merely contemplates alterations to which all parties might assent; and a change due to honest accident can never be an alteration with assent, but the party claiming relief on the ground of accident must prove it. (*e*) Under the English law, it must be an 'apparent' alteration; and an alteration is said to be 'apparent,' if it is of such a kind that it would be observed and noticed by an intending holder, scrutinising with reasonable care, the document which he contemplates taking. (*f*)

Alteration, to be material.

It is not any and every alteration that avoids the instrument. To have that effect the alteration must be in a material particular, namely it must be one which alters, or attempts to alter, the character of the instrument itself, which affects or may affect the contract which the instrument contains, or is evidence of. (*g*) Of course, it is not every small alteration in an instrument which will alter its character. It must be a material alteration so that the party defending himself may be able to say that it is not the same instrument as that which he executed, or to which he put his

(*a*) Daniel, sec. 1373 (a).
(*b*) (1928) A. C. 181.
(*c*) *Ibid.*
(*d*) *Argoll* v. *Cheney*, (1625) Palm. 403; *Bolton* v. *Carlisle*, (1793) 2 H. Bl. 263.
(*e*) Leake on "Contracts" (V Edn.) 574.
(*f*) *Woollatt* v. *Stanley*, (1928) 138 L.T. 620; contra, *Leeds & County Bank* v. *Walker*, (1883) 11 Q. B. D. 84, 90.
(*g*) *Trapp* v. *Spearman*, (1800) 3 Esp. 57; *Aldous* v. *Cornwell*, (1868) L. R. 3 Q. B. 573; *Lakshmammal* v. *Narasimha*, 38 Mad. 746; *Krisna Kisor* v. *Nagendrabala*, 25 C.W.N. 942.

Sec. 87.

hand. (*a*) The question to what extent the identity of the instrument must be changed to bring it within the terms of material alteration must depend on the nature of the alteration made in each case, and the onus is on the person responsible for the alteration to show that on given facts, the alteration is not material. (*b*) In England, it has been held that materiality of alteration is a question of law to be decided by the Court. (*c*) The legal effect of an alteration is not affected by the fact that the alteration made is really for the benefit of the party bound by the instrument. For "as soon as it is established that there has been a material alteration in a bill of exchange, the nature of the alteration becomes immaterial." (*d*)

A material alteration may be by change of date or time of drawing or of the place of payment, or by change in the sum payable or its medium or in the interest to be paid, or it may be such as affects the number or relation of parties, or the legal character of the instrument. (*e*)

Alteration in date.

The date of a bill or note is a material portion of it, and any alteration of such date will avoid the bill, (*f*) unless made with the assent of the prior parties thereto. (*g*) The date of the instrument is not merely a description of it, but indicates the time when the contract came into existence. In most cases, the date is very material in calculating the date of the performance of the contract, and more often fixes the period of limitation within which the plaintiff will have to sue. (*h*) It does not matter that the alteration of date does not affect the time of payment, for the party bound may well say that it is not the contract he entered into. (*i*) Postponing the time of payment is not always advantageous to the party liable for the payment; for, without his knowing it, he may be away from the place of payment at the altered date without making provision for it, in the belief that it had been duly honoured some time before, and

---

(*a*) Per Cotton, C.J. in *Suffell* v. *Bank of England*, (1882) 9 Q.B D. 555, 572.

(*b*) *Namdev* v. *Swadeshi Vyapari*, 28 Bom. L R 944.

(*c*) *Vance* v. *Lowther*, (1876) 1 Ex. D. 176; *Peizer* v. *Lefkowitz*, (1912) 2 K. B. 235.

(*d*) Lord Campbell, C.J. in *Macintosh* v. *Haydon*, (1826) Ry. & M. 362. Cf. *Gour Chandra* v. *Prasanna Kumarchandra*, 33 Cal. 812, 817; *Godla Thammya* v. *Narisamulu*, 3 Rang. 227

(*e*) *Cf.* B. of Ex. Act, sec. 64 (2).

(*f*) *Pestonji & Co.* v. *Cox & Co.*, 52 Bom. 589, 595. (P.C.) [nct when date is on a slip of paper].

(*g*) *Ibid*; *Master* v. *Miller*, (1791) 4 T. R. 320; *Kader Nath* v. *Garrad*, 77 I. C. 761.

(*h*) *Govindasami* v. *Kuppusami*, 12 Mad. 239; Cf. *Namdev* v. *Swadeshi Vyapari*, 28 Bom. L. R. 944; *Ramasami Kone* v. *Bhavani Aiyar*, 3 M. H. C. R. 247; *Atmaram* v. *Umedram*, 25 Bom. 616.

(*i*) *Stephens* v *Graham*, 7 Serg & R. 505 (Amer.); see *Makhdum Bakhsh* v. *Shaukat Ali*, 13 A. L. J. 683; *Foster* v. *Driscoll*, (1929) 1 K. B. 470.

this postponement may be the ruin of his credit. (*a*) Thus, an acceleration in the time of payment of a bill of exchange by an alteration of the date of the bill or of the time that it has to run, (*b*) or the postponement of the date of payment of a cheque, (*c*) or even an insertion of an incorrect date when the bill bears no date upon its face, is a material alteration, and will avoid the instrument unless assented to by the other parties. The alteration may be not only of the date, but may be also of the year or month or both of them.

Alteration in the time of payment.

The same will be the effect, if any alteration is made in the time when the instrument is due and payable. Thus, where a bill payable 3 months after date was converted into a bill payable 3 months after sight, it was held that the alteration was material and discharged the parties to the bill. (*d*) Sometimes, the date of payment is altered by an alteration in the date of the bill itself. It does not matter, as has already been said, whether the change delays, accelerates or preserves in legal effect, the date of payment. This was held not to apply to a case where a bill was drawn in ordinary form payable so many days after sight, and a note was made in a corner of the bill of the due date, which note was altered from time to time, as fresh time was given to the acceptor, the entry being treated as a mere memorandum and not part of the bill. (*e*) How far an alteration of the place of drawing will affect the instrument is to be decided on the facts of each case. Where a bill with "London" lithographed, but with no drawer's name, was sent to Lausanne where the drawer's name was filled, and the word "London" was struck out and "Lausanne" was inserted, it was held that there was no material alteration on the ground that when the bill was altered, it was incomplete and was not a bill at all. (*f*) But, where a complete inland bill was altered so as to become a foreign bill drawn in Germany, the alteration is material and vitiates the document. Though there was no evidence of any difference between an English and a German bill, the courts cannot shut their eyes to the fact that there was such a difference. (*g*)

Or in the place of payment.

Again, an instrument may be avoided by an alteration in the place of payment. Thus, an alteration in an instrument, so as to enable the payee to sue in a Court where he could not sue on it but

(*a*) *Outhwaite* v. *Luntley*, (1815) 4 Camp. 179.

(*b*) *Walton* v. *Hastings*, (1815) 4 Camp. 223.

(*c*) *Hirschman* v. *Budd*, (1873) L. R. 8 Ex. 171; *Vance* v. *Lowther*, (1876) 1 Ex. D 176.

(*d*) *Long* v. *Moore*, (1790) 3 Esp. 155, notes.

(*e*) *Cox & Co.* v. *Pestonji & Co.*, 50 Bom. 656, affirmed on appeal, *Pestonji & Co.* v. *Cox & Co.*, 52 Bom. 589. (P.C.)

(*f*) *Foster* v. *Driscoll*, (1929) 1 K. B. 470.

(*g*) *Koch* v. *Dicks*, 74 L. J. K. B. 108, affirmed on appeal (1932) W. N. 232.

Sec. 87. for the alteration, is one which would destroy the right of action on the same. (*a*) Where in a bill, a particular place is mentioned as the place of payment, it is obviously a material alteration to obliterate that place and to insert a new one. Thus, where a bill, of exchange is accepted payable at B. & Co., but is subsequently altered by the holder by erasing the name of B. & Co., and substituting the name of E. & Co., it was held that the alteration here materially varied the contract of the party who accepted it, and super-added a responsibility being in the nature of a request by the acceptor to the other house to pay the bill, and therefore the acceptor was discharged from liability. (*b*) The same result ensues if the place of payment mentioned in the bill is scored out, so as to make it payable generally, for, the acceptor will be prejudiced by such alteration, as it may happen that he may be ready to honour the bill at the place mentioned, and the holder may not go to that place to accept the payment. (*c*) Again, if the bill mentions no place of payment, it will likewise be a material alteration to insert in the instrument a place of payment. (*d*) So, where the drawer of a bill after acceptance and without the acceptor's consent wrote on the bill after the acceptance 'payable at Mr. B's, Chiswell Street,' it was held that the bill was materially altered and the acceptor was discharged. (*e*) Of course, if the acceptor consents to the alteration, (*f*) or himself alters the place of payment at the holder's request, he will not be discharged. If the variation is nothing but a memorandum indicating to the holder where to present it for payment, it cannot be said to be a material alteration, and hence in such a case, the other parties will not be discharged. (*g*) How in the case of an alteration of the place of payment, the acceptor is prejudiced, is well indicated by Abbot, C. J. who says, "suppose a bill so altered, to be indorsed to a person ignorant of the alteration; his right to sue the indorser would, as the bill appears, be complete upon default made where the bill is payable; whereas, in truth the acceptor not having in reality undertaken to pay there, would have committed no default by such non-payment. I am of opinion therefore, that the alteration is in a material part of the bill, and the acceptor is in consequence discharged." (*h*) Although by section 86, a place of payment, if inserted

---

(*a*) *Lakshmammal* v. *Narasimha Ragava Iyengar*, 38 Mad. 746.

(*b*) *Tidmarsh* v. *Grover*, (1813) 1 M. & S. 735.

(*c*) *Macintosh* v. *Haydon*, (1826) Ry. & M. 362.

(*d*) *Burchfield* v. *Moore*, (1854) 23 L.J. Q. B. 261.

(*e*) *Cowie* v. *Halsall*, (1821) 4 B. & Ald. 197.

(*f*) *Walter* v. *Cubley*, (1833) 3 L. J. Ex. 2.

(*g*) *Trapp* v. *Spearman*, (1800) 3 Esp. 57; Cf. *Walter* v. *Cubley*, (1833) 3 L. J. Ex. 2; *Ede* v. *Kanto Nath*, 3 Cal. 220. Cf. *Cox & Co. v. Pestonji & Co.*, 50 Bom. 656, affirmed on appeal, 52 Bom. 589. (P.C.).

(*h*) *Macintosh* v. *Haydon*, (1826) Ry. & M. 362.

by the acceptor himself, would leave the acceptance an unqualified and general one, it certainly does vary the contract between others who are parties to the bill, and therefore if interpolated without the acceptor's consent, prejudices him as well. (*a*)

Alteration in the sum payable.

If the sum payable is altered, for example, from £ 150 to £ 100, it is certainly a material alteration. (*b*) It is no excuse to say that the person liable has been benefited by altering the amount to a lesser sum, for the identity of the contract is destroyed, and the law following its stern but wise rule declares it void; and a leniency towards alteration in bills and notes will lead to more dangerous consequences than in the case of deeds, as the former are of more constant use and are generally intended for free circulation.

Alteration in the interest or its rate.

Closely connected with the above, are the alterations in the interest or the rate of interest or the rates of exchange, for they all affect the amount due and payable under the instrument. Thus, where a stipulation to pay interest was interpolated, (*c*) or where an alteration is made of the specified rate of interest in a bill from 6 per cent. to 12 per cent., (*d*) or when the rate is reduced from 8 per cent., to 2 per cent., (*e*) even if it be made in a clause penal in its nature, and hence not enforceable at law, (*f*) or where a note made payable with 'lawful interest', was altered by adding the words 'interest at 6 per cent.', it was held that the holder could not recover on such instrument. (*g*) Adding a rate of exchange in a bill drawn abroad is also a material alteration. (*h*) Where there was originally provision for interest and the rate also was sufficiently indicated, the addition of the words " with interest ", is not a material alteration and does not vitiate the document. (*i*)

Or in the medium of payment.

A variation in the medium of payment, or in the currency in which it is to be made will also vitiate the contract. So, an alteration into pounds from dollars, or striking out the currency mentioned therein, would be a material alteration. Though such alteration can do no injury, yet on the ground that there might result some possible injury in compelling the acceptor to pay in a currency other than that

(*a*) Lord Campbell, C. J. in *Burchfield* v. *Moore*, (1854) 23 L. J. Q. B. 261.

(*b*) *Hamelin* v. *Bruck*, (1846) 9 Q. B. 306; *Scholfield* v. *Londesborough*, (1896) A. C. 514; *Imperial Bank of Canada* v. *Bank of Hamilton*, (1903) A. C. 49.

(*c*) *Sunder Khatik* v. *Mahadeo*, 23 A. L. J. 253.

(*d*) *Sutton* v. *Toomer*, (1827) 7 B & C. 416; *Christacharlu* v. *Karibasayya*, 9 Mad. 399; *Sunder Khatik* v. *Mahadeo*, 23 A. L. J. 253.

(*e*) *Godla Thammya* v. *Narisamulu*, 3 Rang. 227.

(*f*) *Oodeychand* v. *Bhaskar*, 6 Bom. 371. Cf. *Anandji Visram* v. *Nariad Spinning and Weaving Co., Ltd.*, 1 Bom. 320.

(*g*) *Warrington* v. *Early*, (1853) 2 E. & B. 763.

(*h*) *Hirschfeld* v. *Smith*, (1866) L. R. 1 C. P. 340.

(*i*) *Lala Tulsi Ram* v. *Ram Saran*, 49 M. L. J. 132, 136 (P.C.)

Sec. 87. he contracted to make the payment in, the law holds that such alterations avoid the contract.

Alteration by adding, etc., parties.

The addition of a new party to the contract on a negotiable instrument without the consent of all the parties on it, vitiates the instrument. (*a*) Applying the principle already enunciated, it will be clear that an addition of a party to a contract is a material alteration, and may seriously affect the position of parties. For example, if the original makers have a demand against the payee, which they could lawfully set-off against the instrument, the addition of another party as a maker, may destroy that right; or the place of residence of the new party may enable the holder or the payee to change the *forum* of the suit brought by him to enforce the instrument. Thus, where a promissory note ran as fallows: " We the undersigned jointly and severally promise," any body who signed beneath the signatures of the original makers, would on the face of the note appear to be a maker, and such signature would be a material alteration which would render the note void, if made without the consent of the parties at the time the alteration was made, unless it was made in order to carry out the common intention of the parties. (*b*) Where it was intended that two persons should jointly execute a promissory note and should become jointly liable, and where it was found that the signature of one of them is a forgery, the whole note is bad and unenforceable against either (*c*); but in a suit on a note alleged to have been executed by two persons, where it was found that it was not executed by the one or with his consent or on the date it bore, nevertheless the Court passed a decree against the other, on his admission that he and the other executed the note and received the amount. (*d*) The forgery of the mark of a person, (*e*) or the cutting-off (*f*) or erasure (*g*) of the name of one or more of the makers or drawers, or an alteration in the name of the payee so as to make him a different person, (*h*) is likewise a material alteration. It need hardly be said that converting a joint-note into a joint and several note, *e.g.*, by altering the words 'I promise' to 'we promise,' is a material alteration. (*i*)

(*a*) *Gardner* v. *Walsh*, (1855) 5 E. & B. 83; *Gour Chandar* v *Prasanna Kumar*, 33 Cal. 812. Cf. *Madam* v. *Athinarayana*, 21 L. W. 532.

(*b*) *Ma Sein* v. *Chidambaram*, 9 I. C. 463.

(*c*) *Amirtham Pillai* v. *Nanjah*, 26 M. L. J. 257.

(*d*) *Tanugunta Brahmayya* v. *Sangam Rami*, 16 M. L. T. 185; *Santhu Mohideen* v. *Jamal*, (1928) Mad. 1092. But see *Madam* v. *Athinarayana*, 21 L. W. 532.

(*e*) *Santhu Mohideen* v. *Jamal*, (1928) Mad. 1092.

(*f*) Cf. *Mason* v. *Bradley*, (1843) 11 M. & W. 590.

(*g*) *Nicholson* v. *Revill*, (1836) 4 A. & E. 675.

(*h*) *Kamal Khan* v. *Nizamuddin*, 20 A. L. J. 987.

(*i*) *Perring* v. *Hone*, (1826) 4 Bing. 28; Cf. *Ellesmere Brewery Co.* v. *Cooper*, (1896) 1 Q. B. 75.

The instances given above are not exhaustive. Any alteration which does affect a change in the legal character of the instrument, in respect of the obligation of the parties to it or in the matter of weight of evidence, will avoid the instrument against the parties not consenting thereto. Where an alteration is made in the terms of the consideration or in the words of negotiability of the instrument, it will be a material alteration in most cases. Thus, where a bill originally expressed to be "for value received generally" was subsequently altered into "for the good-will and trade of Mr. K. deceased," it was held that the bill was materially altered and so void; for the alteration made the instrument a confession in evidence of a fact which might otherwise require extraneous proof. (*a*) Again, the addition of the words 'or order' or 'or bearer' was held to be a material alteration in a note, because otherwise it was not negotiable under the Indian law. (*b*) Striking out the words 'or bearer' in a negotiable note payable to order or bearer, or the substitution of 'bearer' for 'order' in an indorsement is a material alteration; (*c*) though the substitution of 'or order' for 'bearer' is not a material alteration. (*d*) In a Bank of England note which is a part of the currency of the country and is a legal tender, the number on the note is an important and material portion of the same. Hence, the alteration of the number of a Bank of England note is a material alteration avoiding the document. (*e*) But, the case of an ordinary promissory note is different, the number on it, is no part of the operating portion, and an accidental disagreement of the number is not material, and hence the note is not avoided. (*f*) Crossing is a material part of the cheque, and its alteration will avoid the instrument. (*g*)

Adding an attestation.

The addition of an attesting witness is not according to Indian cases, a material alteration in a negotiable instrument. Such addition, it is contended, does not change the character of the instrument so as to enable the person to say that he did not execute it, and also on the ground that attestation is no part of the document as executed by the executant, but merely one of the means of proof of the document, and as such, it is not a material part of the document within the principle of the rule under consideration. (*h*) This reasoning

(*a*) *Knill* v. *Williams*, (1809) 10 East. 431.

(*b*) Since amended, see sec. 13 *ante*; Cf. *Attwood* v. *Griffin*, (1826) 2 C. & P. 368.

(*c*) Daniel, sec. 1395; 9 L. W. (sh. n.) 36.

(*d*) *Attwood* v. *Griffin*, (1826) 2 C. & P. 368.

(*e*) *Suffell* v. *Bank of England*, (1882) 9 Q. B. D. 555.

(*f*) *Hong Kong & Shanghai Banking Corporation* v. *Lo Lee Shi*, (1928) A. C. 181.

(*g*) See the notes to sec. 125 *post*.

(*h*) *Mohesh Chunder* v. *Kamini Kumari*, 12 Cal. 313; *Mahomed Vazeeralli* v. *Suryanarayana*, 1 M. L. J. 388; *Ramayyar* v. *Shanmugam*, 15 Mad. 70; *Venkatesh Prabhu* v. *Baba Subraya*, 15 Bom. 44; contra, *Sitaram Krishna* v. *Daji Devaji*, 7 Bom. 418.

Sec. 87.

would not apply to cases where attestation is necessary to the validity of the instrument, as in the case of mortgages executed under the Transfer of Property Act. There is much force, it must be admitted, in the contention on the other side, that such an addition is material and vitiates the document. For, an alteration in a document stating a falsehood either expressly or by implication by way of increasing the apparent evidence of the genuineness of the instrument, must certainly be material. 'It may be that the attestation added is that of a respectable man whose evidence may be of great service. The document may be difficult to prove, the witness being dead, and the addition of an attesting witness cannot be under-rated. If a person procures another, not present at the time of execution, to subscribe to the document as a witness, he will thus be in a position (improperly gained) to show the due execution of the same, by proving the handwriting of such witness, if he be dead or out of jurisdiction, by honest witnesses swearing truly to the handwriting of the supposed attesting witness,' a position which no Court of law ought to tolerate. Besides, it will be dangerous to allow such additions with impunity, at any rate, the Court should exact very rigid proof of perfect good faith in granting relief on such a document. The principle recognised in Indian decisions that the addition of a witness is not a material alteration, was extended by the Madras High Court to a case where the attestation of the son of an obligee (a Hindu), was forged with a view to fix him with liability. (*a*) This is carrying the doctrine too far, and illustrates the danger already pointed out. Even the case of *Suffell* v. *Bank of England*, (*b*) on which the Indian decisions are based, decides that the alteration in order to be material, need not vary the contract, and it will be sufficient if it is altered in an essential part. It has been held, that the addition of two attesting witnesses subsequent to the execution of an improperly stamped promissory note, in order to convert it into a bond and thereby opening up the possibility of suing upon it on payment of penalty, is tantamount to a material alteration which invalidates the instrument and destroys the right of action on it. (*c*) Even a mutilation of the document, the effect of which was to make some material word to disappear, will avoid the document. (*d*)

Alteration before completion, does not vitiate.

In two cases, however, an alteration, though material, will not vitiate the instrument. Firstly, when the alteration is made before the bill or note is issued. When an instrument is altered from a note

(*a*) *Ramayyar* v. *Shanmugam*, 15 Mad. 70.
(*b*) (1882) 9 Q. B. D. 555.
(*c*) *Mangal Das* v. *Jaswant Singh*, (1930) Lah. 959.
(*d*) *Lakshmammal* v. *Narasimha*, 38 Mad. 746.

to a bill before it is negotiated, (*a*) or where in a joint and several note by three, after two have signed, the third before signing inserted new words in the instrument, (*b*) or where the place of drawing was changed before the instrument was available as a bill, (*c*) or where a bill or note was altered by the consent of all the parties before delivering it over to the payee, (*d*) it was held that the alteration took place before the instrument was available as such, and so not void. An accommodation bill is not issued until it comes into the hands of some person, who is entitled to treat it as available in law, and so an alteration with the assent of the accommodator, before the bill came into the hands of a *bona fide* holder for value, will not vitiate the bill. (*e*)

Or made to correct a mistake.

Secondly, if the alteration made was merely to correct a mistake or to make it what it was originally intended to be, it does not vitiate the contract. Thus, where an indorsement is inserted to rectify a mistake, (*f*) or where a bill was dated by mistake 1832 instead of 1823, and subsequently the agent of the drawer corrected the mistake, (*g*) or again, where a note by the defendant was altered by him after delivery to the plaintiff, by the insertion of the words 'or order', and it was proved that the alteration was in pursuance of the original intention of the parties, (*h*) it was held that the alteration did not vitiate the contract. In this connection, we may refer to cases where instruments are issued with spaces left blank that they may be filled up later on. (See notes to section 20 *ante*)

Or to effectuate intention of parties.

Onus.

Where the instrument appears to be altered, it is incumbent upon the plaintiff (*i.e.*, the holder) to show that the alteration is not improperly made, and the presumption in the case of negotiable instruments is that the alteration was made subsequent to the issue of the instrument; while in the case of deeds, etc., the presumption is the other way. (*i*) Where a bill appears to have been altered, or there are marks of erasure on it, the party seeking to enforce the instrument is bound to give evidence that it is not avoided thereby. (*j*)

(*a*) *Webber* v. *Maddocks*, (1811) 3 Camp. 1.

(*b*) *Wright* v. *Inshaw*, (1842) 1 Dowl. (N. S.) 802.

(*c*) *Foster* v. *Driscoll*, (1929) 1 K. B. 470.

(*d*) *Sherrington* v. *Jermyn*, (1828) 3 C. & P. 374.

(*e*) *Downes* v. *Richardson*, (1822) 5 B. & Ald. 674.

(*f*) *London Provincial Bank* v. *Roberts*, (1874) 22 W. R. 402; *Gopal Row* v. *Veerappen*, 22 M. L. J. 121 (payee's name altered, to correct a mistake).

(*g*) *Brutt* v. *Picard*, (1824) Ry. & M. 37.

(*h*) *Byrom* v. *Thompson*, (1839) 11 A. & E. 31; *Cruchley* v. *Clarance*, (1813) 2 M. & S. 90.

(*i*) *Henman* v. *Dickinson*, (1828) 5 Bing. 183; *Ramasamy Kone* v. *Bhavani Ayyar*, 3 M. H. C. R. 247.

(*j*) *Knight* v. *Clements*, (1838) 8 A. & E. 215; *Johnson* v. *Duke of Marlborough*, (1818) 2 Stark 313.

Sec. 87.

Or made with consent.

If the alteration is made with the consent of parties, then the instrument is not rendered void as against them. The party making or authorising the alteration will be bound by it, as also the person who consents to such alteration. (*a*) Thus, where the plaintiff and the defendant agreed at the time of executing the note that the mark of a third person should be added to it, the note is not wholly void, and a decree can be given against the actual executant, unless the arrangement is one made to defraud the third person of his property, in which case the contract itself will be illegal. (*b*) Consent to an alteration may be given either prior to, or subsequent to the alteration; again, it may be either express or implied. But, a mere answer to a notice of dishonour that the letter informing a party of dishonour should have his earliest attention, would not amount to an assent, where a joint note had been altered into a joint and several note. (*c*) Payment of interest or indorsing the note as if it were negotiable, or a promise to pay, or an offer of security after knowledge of the alteration, will be sufficient evidence of subsequent consent. (*d*)

Or when not material.

Again, alterations which are immaterial will not vitiate the contract. If the alteration serves only to state explicitly what was clearly implied in the instrument, or what the law would infer from it, such alteration does not affect the validity of the instrument. (*e*) Insertion of words neither affecting the responsibility of parties nor prejudicial to their interests, will not render the contract void. (*f*) Thus, where the name "Williams" had been erased and the words "Edwards Thomas" was substituted, and it was found that Williams was really Edward Thomas, it was held that the alteration was immaterial. (*g*) Where a bill payable to bearer is converted into a bill payable to order, (*h*) or where the words 'on demand' added to a note in which no time of payment is expressed, (*i*) or where a bill addressed by mistake to J. C. & Co., was corrected to J. & C., (*j*), or where an erroneous due date is added to a bill, (*k*) or where the words 'or

---

(*a*) Cf. *Scholfield* v. *Londesborough*, (1896) A. C. 514, 542; *Isac Mahomad* v. *Bai Fatma*, 10 Bom. 487; *Cariss* v. *Tattersall*, (1841) 2 M. & Gr. 890.

(*b*) *Madam Pillai* v. *Athinarayana Pillai*, 21 L. W. 532.

(*c*) *Perring* v. *Hone*, (1826) 4 Bing. 28

(*d*) *Cariss* v. *Tattersall*, (1841) 2 M. & Gr. 890; *Kershaw* v. *Cox*, (1801) 3 Esp. 246.

(*e*) *Tikam Das* v. *Ganga kom Mathura Das*, 11 Bom. H. C. R. 203, following *Aldous* v. *Cornwell*, (1868) L. R. 3 Q.B. 573; *Petit* v. *Benson*, (1697) Comberb. 452; *Ma Shawe Yu* v. *K. K. N. K. Raman Chetty*, (1902) 1 L. B. R. 255.

(*f*) See Chalmers, (10th Edn.) 256.

(*g*) *Howgate & Osborn's Contracts*, In re. (1902) 1 Ch. 451.

(*h*) *Attwood* v. *Griffin*, (1826) 2 C. & P. 368.

(*i*) *Aldous* v. *Cornwell*, (1868) L.R. 3 Q. B. 573.

(*j*) *Farquhar* v. *Southey*, (1826) M. & M. 14.

(*k*) *Fanshawe* v. *Peet*, (1857) 26 L. J. Ex. 314.

Sec. 87.

order' were struck out by the acceptor in the case of a bill payable "to D. or order," (a) or where there was alteration of the place where the bill was drawn, (b) it was not material. The addition of the words 'with interest' in a note where the rate was already specified, is not a material alteration. (c) The addition of a surety without the knowledge of the maker, or the insertion of the word 'annually' after interest, or changing the marginal figures, making them conform to the written amount or the addition of the Christian name, in order to identify the party, (d) or changing the memorandum when it is immaterial, or re-tracing a faded name or writing in ink, a name in pencil, is not material. (e) The addition in the margin, of a mere statement of fact which is not covered by the signature is not a material alteration, (f) nor a provision in the margin for payment of interest after maturity inserted by one of the executants would vitiate the contract against the other executants. (g) Some of the cases reported in the Upper Burma Reports, go to the extent of holding that there is no material alteration when a person signs as a maker while his name does not appear in the body of the instrument, for, it is said, his signing as such is not inconsistent with the provisions in the body of the instrument. (h) Where, a bank-note was accidentally mutilated during a wash, the material portions of it were however found and patched up and its most critical characteristics were made plain, but the number of the note could not be recovered, it was held that the contract has never been altered, and is sufficiently evidenced by the mutilated documents and the verbal testimony, and the number was not material to the note. (i)

Stamp.

When a note or bill of exchange is materially altered by the consent of parties, it becomes a new contract requiring a fresh stamp. If the instrument is altered before it is issued or if it is altered for the purpose of correcting a mistake, and bringing the instrument in accordance with the original intention of the parties at the time of issue, the alteration does not require a new stamp.

Effect of alteration.

By an alteration, only the parties liable on the instrument at the time of the alteration are discharged, and it does not affect the liability

(a) *Meyer* v. *Decroix*, (1891) A. C. 520 (H.L.).
(b) *Foster* v. *Driscoll*, (1929) 1 K. B. 470.
(c) *Lala Tulsi Ram* v. *Ram Saran Das*, 49 M. L. J. 132 (P.C.).
(d) Daniel, sec. 1398.
(e) Daniel, sec. 1400.
(f) *Ede* v. *Kanto Nath Shaw*, 3 Cal. 220.
(g) *Mangal Sen* v. *Cannon*, 118 P. R. 1885.
(h) *Ko Pe Twe* v. *Venkatachellam Chetty*, 2 U.B.R. (1892-96) 593; *Ma Kin* v. *C.T.L. Algappa Chetty*, U.B.R. (1902) Neg. Ins. 1; *Ma Shawe Yu* v. *K.K.N.K. Raman Chetty*, (1902) 1 L.B.R. 255.
(i) *Hong Kong & Shanghai Banking Corporation* v. *Lo Lee Shi*, (1928) A. C. 181.

Sec. 87.

of persons subsequently becoming parties. The instrument is rendered void only as against any one who is a party thereto, and not against any one becoming a party subsequently to the alteration. If a person indorses the altered instrument even without the knowledge of the alteration, he becomes liable to the indorsee, and a person who accepts an altered instrument cannot evade his liability on the acceptance, by reason of the previous alteration. (*a*)

Suit on the original consideration.

The next question is whether the holder can sue on the consideration in respect of which an instrument was negotiated to him, though he cannot sue on the instrument as being vitiated by an alteration. In the case of a contract vitiated by a material alteration, it was held that though the contract was not enforceable, the defendant was not entitled to retain the advance paid to him under the contract. (*b*) So far as negotiable instruments are concerned, the second paragraph of the section lays down the rule that the indorsee cannot sue the indorser upon the consideration for the indorsement, if the alteration was one made by him. The rule thus laid down is slightly different from that in the English law whereby, the alteration whether made by the indorsee or by somebody else while it was in his custody, disentitles him from suing on the consideration. (*c*) The Indian Legislature, perhaps thought the English rule to be unnecessarily harsh and did not adopt it, but the principle upon which both the rules are based is the same. That principle is, that it is unjust to hold that a party can sue the person whose remedy against prior parties on the bill is destroyed by the conduct of that party. Under Indian law, if the indorsee did not himself make or authorise the alteration, he can sue his indorser on the consideration, and that indorser can in his turn sue his indorser, and so on to the maker or acceptor. The indorsee, if guilty of committing a material alteration, cannot sue on the original consideration; but can the payee or the drawer sue on the consideration, if he is guilty of the same fault? The section is silent on the point, and the special reference in the section to the case of indorser and indorsee will rather suggest that the payee or drawer can sue upon the consideration, as the reasoning by which an indorser is held not liable on the original consideration, does not apply to the case of a maker or an acceptor. (*d*) If the drawer or payee does not intend to commit fraud by such alteration, he can sue the acceptor or maker on the consider-

(*a*) Sec. 88 *post*.

(*b*) *Anantha* v. *Surayya*, 43 Mad. 703.

(*c*) *Alderson* v. *Langdale*, (1832) 3 B. & Ad. 660.

(*d*) *Saminathan* v. *Palaniappa*, 18 C. W. N. 617 (P. C.); *Zulfiqar Ahmad* v. *Robert Elliet*, 85 I. C. 423 (Where decree was given, on admission by party).

ation; (*a*) but if fraud is intended, it is submitted that the Court should not allow him to sue on the consideration, (*b*) though the rule may be contended to be different in the case of executed contracts. (*c*)

This right to sue on the original consideration can arise only between immediate parties, and there is nothing in the Indian Act corresponding to the provision in section 64 of the English Act, by which a holder in due course can enforce payment according to the original tenor of the instrument.

Alterations permitted by the Act.

The third paragraph of the section deals with cases which are not considered as alterations under the Act. Filling up of the blanks under section 20, and conversion of an indorsement in blank into an indorsement in full under section 49, are exempted from the operation of the section. Neither qualifying or limiting an acceptance under section 86, nor crossing a cheque after issue under section 125, is regarded as an alteration under the section.

Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

NOTES.

This section seems hardly necessary, as the alteration affects only the liability of persons who are parties to the bill previous to the alteration, and not that of subsequent parties. (*d*) So, an acceptor accepting the bill after the alteration, or the indorser indorsing it after the alteration cannot set up the defence of alteration, as they are not prejudiced by it. The acceptor or indorser by his acceptance or indorsement, as the case may be, undertakes to pay the amount according to the tenor of the instrument, as it is at the time of the acceptance or the indorsement. But it is not open to a drawee named in the bill to substitute a third person in his place, and consequently the acceptance of the bill by the person who had been so substituted does not render him liable. (*e*)

(*a*) *Atkinson* v. *Hawdon*, (1835) 2 A. & E. 628; *Sutton* v. *Toomer*, (1827) 7 B. & C. 416; *Saminatha* v. *Palaniappa*, 18 C. W. N. 617 (P.C.).

(*b*) *Gour Chandra* v. *Prasanna Kumar*, 33 Cal. 812; Cf. *Madam* v. *Athinarayana*, 21 L. W. 532.

(*c*) *Subrahmania* v. *Krishna*, 23 Mad. 137.

(*d*) *Hamelin* v. *Bruck*, (1846) 9 Q. B. 306; Cf. *Langton* v. *Lazarus*, (1839) 5 M. & W. 629; see sec. 87 *ante*.

(*e*) *Jagan Nath* v. *Heap & Co.*, 2 I. C. 804.

Sec. 89.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

NOTES.

Though, ordinarily, the drawer of a cheque or the acceptor of a bill of exchange would not debit the drawer with more than the amount for which the cheque or the bill was originally drawn, although he himself might have paid more to the holder of the instrument, (*a*) an exception to this rule was recognised that where the drawer drew the cheque or bill negligently in such a manner as facilitating or giving an opportunity for forgery, and where owing to such fraudulent act, the drawee or acceptor paid the wrong person or paid a larger amount, the drawee must bear the loss; for, if one of two innocent persons should suffer, it ought to be the one, who by his own acts occasioned the confidence and the loss. (*b*) If, however, both the parties are innocent, and no act or conduct can be attributed to either of them, which may be said to be the cause of the loss, the old Roman law seems to have been that a drawee was entitled to be recouped by the drawer when by reason of a fraudulent alteration on the draft, he has been led to pay more than the sum really drawn for. (*c*) This

(*a*) *Hall* v. *Fuller*, (1826) 5 B. & C. 750.

(*b*) *Young* v. *Grote*, (1827) 4 Bing. 253; *London Joint Stock Bank* v. *Macmillan*, (1918) A. C. 777; see the notes to secs. 85 and 131.

(*c*) See *London Joint Stock Bank* v. *Macmillan*, (1918) A. C. 777, 792; *Scholfield* v. *Lord Londesborough*, (1896) A. C. 514, 535. (H. L.)

principle was criticised by Pothier, who limited the rule in its application to cases in which the drawee's negligence has given the opportunity for alteration. But, this principle of Roman Law was applied to bankers in the interests of commerce, to protect them from the consequences of improper payments of altered crossed cheques, by the Crossed Cheques Act of 1876 (39 and 40 Vict. ch. 81, sec. 11). This provision is re-enacted in the proviso to section 79 of the Bills of Exchange Act.

Sec. 89.

Person paying in due course protected.

This section of the Indian Act, extends the protection given to bankers in the case of alterations of crossings on cheques under the English Crossed Cheques Act of 1876 (39 & 40 Vict., ch. 81, sec. 11) to all cases of alterations. The proviso to section 79 of the Bills of Exchange Act gives protection only to bankers in the case of all alterations, and thus, it is narrower than the present section which extends the protection not only to bankers or any person liable to pay on cheques, but also to any person liable to pay on other negotiable instruments as well, such as, bills of exchange, and promissory notes. The conditions required for the application of the section are (1) that the alteration should not be apparent, and (2) that the payment should be a payment in due course, *i.e.*, a payment in good faith and without negligence, under circumstances which do not afford a reasonable ground for believing that the person to be paid is not a holder entitled to receive the payment. (*a*) If the alteration is apparent *i.e.*, noticeable on reasonable scrutiny, (*b*) then the person paying cannot be said to make the payment in due course, as he is guilty of negligence, and the payer cannot set up such payment to relieve himself of any liability to the other parties on the instrument. But, if the alteration is not apparent, and payment is made in good faith and without negligence, then such payment is treated as a payment in due course. The effect of such payment is that the person paying is not only discharged from liability on the instrument, but can also debit the payment against the person for whose account he pays the amount.

Eng. Law.

The English law on the point is different, though in the case of cheques, this rule is made applicable to the bankers, by the proviso to section 79 of the Bills of Exchange Act, which is a re-production of section 11 of the Crossed Cheques Act of 1876.

The rule with regard to cheques, laid down in *Young* v. *Grote* (*c*) that the drawer is to bear the loss, if by his negligence the banker pays a larger amount than it was drawn for, has been more than once

(*a*) See the notes to secs. 10 and 85 *ante*.

(*b*) *Woollatt* v. *Stanley*, (1928) 138 L. T. 620.

(*c*) (1827) 4 Bing. 253.

Sec. 90.

doubted in England, and in fact, was not applied in a later case ; (*a*) but it has been affirmed by the House of Lords in the case of *London Joint Stock Bank* v *Macmillan & Arthur*, (*b*) where they doubt the correctness of the reasoning of the Judicial Committee in *Colonial Bank of Australasia* v. *Marshall.* (*c*) Though the rule with regard to a banker in the case of cheques in England, has been altered by the Bills of Exchange Act, still the rule with reference to bills of exchange and promissory notes remains the same as before, and is different from that laid down by the present section.

It is perhaps unnecessary to point out that the section is limited in its application to cases of alterations, which, it is submitted, do not include forgery of signature of any party to the negotiable instrument. As to how payment of a crossed cheque is to be made, see sections 126 to 130.

Extinguishment of rights of action on bill in acceptor's hands.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

NOTES.

Discharge of bill, by payment at or after maturity by, acceptor.

The corresponding provision in England is to be found in section 61 of the Bills of Exchange Act which is practically in the same words as in this section. Both the sections apply only to bills of exchange, and are based on the principle that the acceptor of the bill is the principal party bound for its payment, the others being merely sureties, and that therefore a payment by him discharges all prior parties on the instrument and the obligations under it are also at an end. If, at or after maturity, the acceptor of a bill which has been in circulation, holds the instrument and produces it, the natural inference under the circumstances is that according to the contract on the instrument, the acceptor had paid for it, and that the contract having been thus performed, the bill itself was discharged ; (*d*) but this presumption is

---

(*a*) *Scholfield* v. *Londesborough*, (1896) A. C. 514; *Colonial Bank of Australasia, Ltd.* v, *Marshall*, (1906) A. C. 559; *Smith* v. *Prosser*, (1907) 2 K. B. 735, 746 ; *Morrison* v. *Verschoyle*, 6 C. W. N. 429, 444; *Bhagwan* v. *Creet*, 31 Cal. 249.

(*b*) (1918) A. C. 777 ; see also *R. E. Jones, Ltd.* v. *Waring & Gillow, Ltd.*, (1926) A. C. 670.

(*c*) (1906) A. C. 559.

(*d*) See *Pfiel* v. *Vanbatenberg*, (1810) 2 Camp. 439 ; *Shearman* v. *Fleming*, 5 B. L. R. 619.

rebuttable. (*a*) Though ordinarily, payment may be made by any person liable on the instrument; still the bill itself will not be discharged, unless the payment is made by the acceptor, for he is the person ultimately liable, and a payment by him is absolutely necessary to make the instrument no longer a negotiable instrument. (*b*) Satisfaction of a bill as between the drawer and an indorser, or an indorser and his indorsee even after the bill becomes due, does not necessarily ensure as a satisfaction on behalf of the acceptor, or operate to discharge him from liability to the holder. (*c*) If there are more than one acceptor, and the bill is negotiated into the hands of one of them who keeps it till after maturity, the bill is discharged. (*d*) The discharge of an instrument does not by itself affect the other rights of action arising on the instrument not directly but collaterally to it, such as, the rights of contribution between joint makers, drawers or acceptors, (*e*) or the rights of the accommodating party to sue the party accommodated on his paying the amount due. (*f*)

Of accommodation bill.

Even when the acceptance is for the accommodation of the drawer, a payment by the acceptor at, or after maturity, discharges the bill, and he cannot sue the drawer on the bill itself; but it may be used as evidence in an action by the acceptor against the drawer for refund of the amount. In the case of such bills, a payment by the drawer at maturity discharges the bill, for in that case, the bill being for the accommodation of himself, he has no claim against the acceptor for the amount he has paid, that is to say, the party accommodated is the principal party, and a payment by him in due course operates as a discharge of the bill. (*g*)

'At or after maturity.'

To extinguish all rights of action on the bill, it is necessary that the acceptor should be the holder of it at or after maturity; so, if a bill is negotiated back to its acceptor before it is actually due, he may re-issue it, though he cannot enforce payment against any intervening party to whom he was himself liable. (*h*)

'In his own right.'

Further, the transfer of the bill to the acceptor at or after maturity must be in his own right, so that it may operate as a

---

(*a*) *Kali Prasad* v. *Narayan*, (1927) Pat. 417.

(*b*) *Thomas* v. *Fenton*, (1847) 16 L. J. Q. B. 362.

(*c*) *Jones* v. *Broadhurst*, (1850) 9 C. B. 173.

(*d*) *Harmer* v. *Steele*, (1849) 4 Ex. 1.

(*e*) *Ibid*; *Neale* v. *Turton*, (1827) 4 Bing. 149, 151.

(*f*) *Stratton* v. *Matthews*, (1848) 3 Ex. 48; *Reynolds* v. *Wheeler*, (1861) 30 L. J. C. P. 350.

(*g*) *Overend Gurney & Co.* v. *Oriental Financial Corporation*. (1874) L. R. 7 H. L. 348; *Ewin* v. *Lancaster*, (1865) 6 B. & S. 571.

(*h*) *Ashton* v. *Freestun*, (1840) 2 Man & G. 1; *Dod* v. *Edwards*, (1827) 2 C. & P. 602; *Foster* v. *Dawber*, (1851) 6 Ex. 839; see also notes to sec 60 *ante*.

Sec. 90.

discharge of the bill. This part of the rule is founded on the principle, that a present right and liability uniting in the same person cancel each other, for no man can be at the same time plaintiff and defendant. (*a*) So, if the bill is negotiated to the acceptor as the administrator or executor of an estate or as the trustee of a trust or as agent of some other person, the bill cannot be said to be discharged. (*b*) The words "in his own right" show that the rule of Common Law that the bill or note is discharged, if the maker or acceptor becomes an executor of a deceased holder, was not accepted by the Indian Legislature, and the English law at present, according to the Bills of Exchange Act is also the same.

Section not extended to promissory notes.

It is not apparent why the present section has not been extended to promissory notes. The same principle would apply to payments at, or after maturity, by the maker of a note, as his liability on the note is of the same nature as that of an acceptor of a bill. (*c*)

(*a*) *Neale* v. *Turton*, (1827) 4 Bing. 149, 151 per Best, C.J.

(*b*) *Nash* v. *De Freville*, (1900) 2 Q. B. 72.

(*c*) Cf. *Beaumont* v. *Greathead*, (1846) 2 C.B. 494.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Dishonour by non-acceptance.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

NOTES.

Dishonour by non-acceptance.

The section treats of dishonour of bills by non-acceptance. Such dishonour may take place in one of three ways :—

(1) If the drawee does not accept the bill within forty-eight hours from the time of presentment for acceptance, the bill becomes dishonoured at once. If there are two or more drawees who are not partners, and if one of them refuses to accept, the bill becomes dishonoured, for the holder is entitled to get the acceptance, and thus the liability, of all the drawees. If only some of them accept, the holder may either treat the bill as dishonoured, or he may rest content with their acceptance. But in such a case, he cannot charge the prior parties, unless they assented to such a qualified acceptance. But, if the drawees are all partners, acceptance by one of them is equivalent to an acceptance by all the members of a partnership. If some of the partners refuse to accept, while some others have signed their acceptance, it is doubtful whether the bill can be said to be dishonoured.

(2) When the drawee accepts, but seeks to qualify his acceptance, the holder is not bound to take such a qualified acceptance, and may treat the bill as dishonoured. It is, however, open to him to assent to such an acceptance ; but, if he does so, he will discharge all prior parties not assenting to the qualification.

Sec. 92.

(3) In cases where a presentment for acceptance is excused and the bill remains unaccepted, it is said to be dishonoured by non-acceptance. The circumstances under which a presentment for acceptance will be excused are:—(i) where the drawee after reasonable search cannot be found (*a*); (ii) where the drawee is incompetent to contract, for the drawing of a bill imports a contract on the part of the drawer that the drawee is a person competent to accept, and if the holder finds that the drawee is incapable of contracting, he may treat the bill as dishonoured without a formal presentment for acceptance (*b*); (iii) where the drawee is a fictitious person; (iv) where the drawee becomes a bankrupt, or is dead; for under section 75, presentment for acceptance to the assignee or the legal representative has been made optional, perhaps on the ground that presentment for acceptance must as far as possible be personal; and (v) where although presentment for acceptance is irregular, acceptance is refused on some other ground.

The question as to whether on dishonour by non-acceptance, there is an immediate right of recourse against the drawer, has been already discussed under section 30 *ante*.

Dishonour by non-payment.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

NOTES.

This section speaks of the dishonour of negotiable instruments by non-payment. When a bill, note or cheque is duly presented for payment and payment is refused, then such instrument is dishonoured. When a bill had been accepted already, then the acceptor is bound to provide for its payment at the time and place it is due, and his failure to do so, is dishonouring the bill he had undertaken to pay. So also in the case of the maker of a note. Since a cheque is not accepted by the drawee-banker, he is not bound to honour the cheque, unless he has contracted to do so with the drawer of the cheque. This does not, however, affect the question of the dishonour of the cheque; for the drawer by his drawing, declares to the payee that if he presents it to

(*a*) Sec. 61. *ante*.

(*b*) The last paragraph of the section.

the banker on whom it is drawn, he will honour it. If on such presentment, the banker does not pay, then dishonour takes place, and the holder will at once have a right of recourse against the drawer and the other parties on the cheque. (*a*) When the presentment of a bill or note for payment is excused, then the instrument is said to be dishonoured, when it is overdue and remains unpaid.

By and to whom notice should be given.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

NOTES.

Notice of dishonour necessary, to charge parties.

This section lays down the proceedings to be adopted in the case of dishonour of negotiable instruments either by non-acceptance or non-payment. It says that in case of dishonour, the holder of the instrument or one of the parties thereto who remains liable thereon, must give notice of dishonour to all the other parties whom the holder seeks to charge. (*b*) The party primarily liable is not entitled to any notice, for it is his duty to provide for the payment of the paper, on the due date and at the proper place. That is why, the section makes an exception in the case of the maker of a dishonoured promissory note and the drawee or acceptor of a dishonoured bill of exchange. It is they that dishonour the instrument by either refusing to accept or refusing to pay, and notice to them will be notice of a fact that they are already cognisant of. Even if the acceptor should require by his acceptance, presentment for payment, he is not discharged by non-presentment,

---

(*a*) B. of Ex. Act, sec. 47.

(*b*) *Jambu* v. *Palaniappa*, 26 Mad. 526; *Jaggan Nath* v. *Ram Das*, 25 I. C. 881.

Sec. 93.

unless there was an express stipulation to that effect. Thus, if he accepts "payable at A only," the holder must present for payment at that place, and if the acceptor should show that he was damnified by such non-presentment, he would be discharged; otherwise, he remains liable. (*a*)

The reason of the rule.

Why the law requires prompt notice of dishonour is to enable the drawer of the bill and other indorsers to withdraw their effects from, or prevent them from reaching, the hands of the drawee or acceptor, and also to enable such persons to protect their interests by taking the necessary measures for obtaining payment from all other parties liable to them. (*b*) The necessity for such notice will be apparent from the nature of the contract of the several persons who become parties to a negotiable instrument, either as drawers or indorsers. "All the contracts raised upon the bill, it is seen, except those with the acceptor, are contracts of suretyship, that is to say, are contracts of indemnity. Probably from this, though perhaps from other more strictly mercantile circumstances, as for the purpose of making other preparations or modifications in business, notice of dishonour is by the law merchant made a condition of the liability of the surety. The contracts of indorsement then between the immediate parties to them are conditional, and are by way of indemnity. It follows from this last, that there can be no valid claim in respect of the indorsement, where there is no liability in respect of it. And the two together are the reason why a failure by any indorsee to give due notice of dishonour not only disables him from recovering against the immediate indorser, but disables a prior indorser to him from recovering against his indorser, or a prior indorser to him. The indorsee who has failed to give notice cannot recover, because he has not fulfilled the condition of his contract. The others cannot recover, because, as they cannot be made liable, they do not require to be indemnified. For example, the indorser to him who has failed to give due notice is not liable to him, and therefore cannot claim against his own indorser; and therefore, again, such last indorser cannot claim against his indorser, and so on." (*c*)

This absolute rule requiring notice of dishonour, is not affected by the fact that the bill or note is an accommodation instrument, for "it is no excuse for neglect of notice to an indorser that the drawer had no effects in the acceptor's hands, and this circumstance would

---

(*a*) B. of Ex. Act, sec. 52 (2); Chalmers (10th Edn.) p. 206; *Ramchurn* v. *Luchmee Chund*, (1854) 9 Moo. P.C. 46, 74; *Bishop* v. *Chitty*, (1742) 2 Stra. 1195; *Alexander* v. *Burchfield*, (1842) 7 M. & Gr. 1061.

(*b*) *Pigue* v. *Golab Ram*, (1864) 1 W. R. 75.

(*c*) *Horne* v. *Rouquette*, (1878) 3 Q. B.D. 514, 518, per Brett. L.J.

not avail the plaintiff, as the indorser is entitled in all cases to notice, for he has no concern with the accounts between the drawer and the drawee." (*a*) So necessary is notice of dishonour in the case of negotiable instruments, that it is regarded as entering into the contract of the drawer and the indorsers of a bill of exchange, and the indorsers of a promissory note, as a condition that they shall be bound only if acceptance or payment is demanded, and if they are promptly notified that such demand is not complied with. (*b*) In fact, the wording of section 93 is so general and wide, that it has been held that the obligation to give notice of dishonour by non-acceptance or non-payment exists even in the case where an instrument payable on demand is indorsed after dishonour, and though the fact of dishonour must have been to the knowledge of the indorser. (*c*) It is to be noticed that the strict rule of notice is not applicable to any but commercial instruments, and even in the case of commercial instruments, notice need not be given to a person guaranteeing the payment of the bill, he not being a party to it. A guarantor is not discharged by the neglect of the holder in giving notice of dishonour, (*d*) unless he has been actually prejudiced by such neglect, and that too only to the extent of the prejudice suffered by him. In all cases, however, it is safer for the holder to give a reasonable, though not an immediate, notice of dishonour. (*e*)

Notice by whom? By the holder.

Notice of dishonour proceeds, in most cases, from the holder who presents the instrument for acceptance or payment; but it is not necessary that it should always emanate from him. The holder is entitled to take advantage of a notice given by any party, who at the time of giving such notice, is himself liable to be sued on the bill, and is on paying entitled to re-imbursement from prior parties; provided, of course, that such notice is given within a reasonable time, to maintain the action, if the party giving notice were suing on the instrument. (*f*) Thus, the holder of a bill may in an action against the drawer, avail himself of a notice of dishonour given in due time by an indorser on the bill, who at the time of giving such notice was liable to him on the bill. (*g*) It was once thought in England, that a notice by the first indorser who had

(*a*) *Wilkes* v. *Jacks*, (1794) 1 Peake 267, per Lord Kenyon.

(*b*) *Berridge* v. *Fitzgerald*, (1869) L. R. 4 Q.B. 639.

(*c*) *Hemadri* v. *Seshamma*, (1931) Mad. 113.

(*d*) *Walton* v. *Mascall*, (1844) 13 M & W. 72; *Carter* v. *White*, (1883) 25 Ch. D. 666.

(*e*) *Warrington* v. *Furbor*, (1807) 8 East, 242; *Philips* v. *Astling*, (1809) 2 Taunt, 206; *Swinyard* v. *Bowes*, (1816) 5 M. & S. 62.

(*f*) *Chapman* v. *Keane*, (1835) 3 A. & E. 193; *Harrison* v. *Ruscoe*, (1846) 15 M. & W. 231.

(*g*) *Lysaght* v. *Bryant*, (1850) 9 C.B. 46; *Jameson* v. *Swinton*, (1809) 2 Camp. 373.

Sec. 93.

not himself received notice from the second, and who was therefore not obliged to take back the bill, was insufficient between the second indorser and the drawer, on the ground that no one but the holder could give a valid notice of dishonour. (*a*) This doctrine has been definitely over-ruled by *Chapman* v. *Keane*, (*b*) and now, section 49, cl. (4) of the Bills of Exchange Act puts the matter beyond all controversy. The expression "who remains liable on the bill" clearly shows that the Indian law is the same as the English law. So, if the holder contents himself by giving notice to one of several indorsers, and fails to give notice to all, but if any of the indorsers gives notice to the drawer or to any indorser prior to himself within a reasonable time after dishonour and before the said person is discharged by lapse of reasonable time for giving notice to himself, then the holder is entitled to rely on such notice and hold the person notified liable to him. It is the safest course, however, for the holder to give notice to all parties, not only because he avoids the risk of the party to whom he gives notice not transmitting it in time to the other parties, but also because the evidence required to trace the notice to the parties will be more voluminous and perhaps difficult to procure. (*c*).

Or by any other party to the instrument.

'Liable on it.'

For a party to give a valid notice of dishonour, it is necessary that he should himself be liable on the instrument at the time of giving such notice, but it is not necessary that he should be aware of the dishonour at the time, or that he should have himself received notice of dishonour by that time. (*d*) Thus, where C is the first indorser of a dishonoured bill held by D, who gives notice to C one day late, but C on the same day gives notice to the drawer, thus making up, as it were, for the lost day, it was held that the notice was ineffectual; for C having been discharged by the holder's delay, could not give a valid notice, although it appeared that, if successive notices had been given by all the parties to the bill, the drawer could not have received the notice of dishonour earlier. (*e*) For, C could not place the prior indorser in a worse position than he would have otherwise been in. As soon as C was discharged, he was in the position of a stranger to the instrument, and, as we shall see, no stranger can give a notice for the benefit of any party on the instrument. In the above case, if C

(*a*) Ex parte *Barclay*, (1802) 7 Ves. 597; *Tindal* v *Brown*, (1786) 1 T. R. 167; *Stewart* v. *Kennett*, (1809) 2 Camp. 177.

(*b*) (1835) 3 A. & E. 193.

(*c*) Byles (19th Edn.) 262.

(*d*) *Chapman* v. *Keane*, (1835) 3 A. & E. 193; *Jennings* v. *Roberts*, (1855) 24 L. J. Q. B. 102.

(*e*) *Turner* v. *Leech*, (1821) 4 B. & Ald. 451.

had not waited to get the notice of dishonour, but had given notice before he was discharged by lapse of reasonable time, the notice would have been good. Whether a notice of dishonour can be given by the acceptor, is not clear from the section. But, there is nothing to prevent him from doing so, as he is a party as much liable on the instrument as an indorser of the instrument. Under the English law, an acceptor cannot give notice of dishonour. (*a*) It is clear, that the drawee of a bill who has not accepted it, cannot give a notice of dishonour. (*b*)

Notice by a stranger not effectual.

A notice given by a third person, *i.e.*, a person not a party to the instrument, amounts to a mere nullity ; for a stranger cannot by his officious intermeddling, establish any right of the holder, nor defeat any discharge or defence of the indorsers. (*c*) A notice by a stranger can amount to no more than an intimation that a claim may be made against him by the holder, and it does not thence follow that the holder looks to him for payment. Even a subsequent adoption by the holder of a notice by the stranger, cannot be allowed, as such notice is void and cannot be cured by subsequent ratification.

Notice by an agent.

If however, such stranger is the agent of the holder or any other person entitled to give notice, then such notice is valid, for, what a person can do by himself, he can get done by an agent; (*d*) and a person authorised to receive payment is such an agent. (*e*) The Bills of Exchange Act not only permits expressly an agent to give notice, but also provides that such notice need not necessarily be in his principal's name. (*f*) The notice may be in his own name, or in the name of any party entitled to give notice. Thus, where an attorney of the holder gives notice, but by mistake gives it in the name of a prior party (not his principal) liable on the instrument, the notice is good, but any defence available against the party in whose name the notice is given, may be set up. (*g*) If the holder be dead at the time the notice ought to have been given, the legal representative of the deceased, if there is one, can give the necessary notice ; if there is not one, notice must be given within a reasonable time after the appointment of one. This provision cannot, in the absence of an express provision or a recognised custom, be held applicable in India.

(*a*) *Cf.* B. of Ex. Act, sec. 49 (1) ; Daniel, sec. 990 ; sec. 94, *post.*

(*b*) *Hopes* v. *Alder*, (1799) 6 East, 16 (n).

(*c*) *East* v. *Smith*, (1847) 16 L. J. Q. B. 292.

(*d*) *Stewart* v. *Kennett*, (1809) 2 Camp. 177.

(*e*) *Rowe* v. *Tipper*, (1853) 13 C. B. 249.

(*f*) B. of Ex. Act. sec. 49 (2).

(*g*) *Harrison* v. *Ruscoe*, (1846) 15 M. & W. 231.

Sec. 93.

In the case of two or more drawers or indorsers who are partners, notice to one of them is sufficient notice with regard to all. Even if they are not partners, the rule in India is the same as the above, though under the English Act, the rule is different. (*a*) But, in the case of persons who are jointly and severally liable, notice to one of them is not sufficient, except to secure to the holder the joint liability only of those persons. In the case of a joint Hindu family, notice to the manager of the family is a sufficient notice; but it is not clear whether a notice to a member of the family, not the manager, will be regarded as a sufficient notice to all. Under the section, if they are all jointly liable, a notice to one of them is sufficient in respect of all. When the holder sues the members of a joint Hindu family, on a bill of exchange or hundi drawn by the managing member of the family, the other members of the family are entitled to set up the defence of the want or irregularity of the notice to the managing members. (*b*) It would seem, that a notice of dishonour given to a continuing partner after dissolution is valid, and binds even partners who have retired from the partnership. (*c*)

Effect of default in giving notice.

The consequence of not giving due notice of dishonour is to discharge all parties who are entitled to require such notice. In fact, the liability of the drawer under section 30, and of the indorser under section 35, arise only on notice of dishonour being given to them, unless it is excused under section 98. Dishonour is always treated as a part of the cause of action of the holder. (*d*) The word "must" in this section, shows also the imperative nature of the obligation cast on the holder, and unless the holder satisfies that the requirements of this section have been complied with, he cannot enforce his rights against the other parties, (*e*) so much so, it has been held, that where an action was commenced on the date of dishonour, and it was proved that a notice of dishonour was put into post that day, and there was no other evidence of receipt thereof by the defendant, the plaintiff must fail, as the right of action was not complete, as such right, dates from the date when the notice is or ought to have been received, and not when it is sent. (*f*) At any rate, there is no cause of action until after the expiry of the last day of grace. (*g*) The drawer and the indorsers to whom

(*a*) B. of Ex. Act, sec. 49 (11); Daniel, sec. 999 (a); see the notes to sec. 94 *post*.

(*b*) *Krishna Shet Bin* v. *Hari Valji*, 20 Bom. 488.

(*c*) *Goldfarb* v. *Bartlett*, (1920) 1 K. B. 639.

(*d*) *Mulchand* v. *Suganchand*, 1 Bom. 23; *Ram Ravji* v. *Pralhaddas*, 20 Bom. 133; *De Souza* v. *Coles*, 3 M.H.C.R. 384, 394; *Jagannadha* v. *Lakshmana*, 47 M L.J. 475; *Kadappa* v. *Thirupathi*, 21 L. W. 210.

(*e*) *Cf.* B. of Ex. Act, sec. 45.

(*f*) *Castrique* v. *Bernabo*, (1844) 6 Q. B. 498.

(*g*) *Kennedy* v. *Thomas*, (1894) 2 Q. B. 759; see *Gelmini* v. *Moriggia*, (1913) 2 K. B. 549.

notice of dishonour is not given, are discharged from the liability not only on the bill, but also in respect of the original consideration. (*a*) But, where a bill is dishonoured by non-acceptance and notice of dishonour is not given, the rights of a holder in due course subsequent to the dishonour will not be affected by such omission. (*b*) Again, where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of dishonour on failure of payment at the due date unless, in the meantime, the bill has been accepted. In the converse case, that is, in a case where a bill is dishonoured by non-acceptance, and no notice is given, the parties are discharged, though the holder presents it for payment and gives simultaneous notices of dishonour by non-acceptance and non-payment. (*c*) The fact, that the drawer or indorsers of a bill knew that the bill had been dishonoured, does not dispense with the necessity for giving notice of dishonour, for, what is required is a formal notice. (*d*) Therefore, where one company drew a bill on another company which had the same secretary as the first, it was held on dishonour of the bill, that notice of dishonour was not dispensed with by the fact that the secretary knew of the dishonour, as there was no duty cast on him to communicate to the drawer-company, the knowledge received by him as secretary of the indorsee-company. (*e*)

On the same principle, a mere demand of payment of the bill without stating that it had been dishonoured, does not amount to a notice of dishonour; nor will a protest, amount to such notice. (*f*) Though local usages in connection with hundis are saved from the operation of the Act, it has been held by the Bombay High Court, that the provisions of the Act apply to hundis also, in the absence of any local usage to the contrary. (*g*) And the learned Judges of the Allahabad High Court, (*h*) in applying the Act to hundis, say: "If we look to the Negotiable Instruments Act, which though not having force or effect in regard to an instrument of the kind sued upon might be usefully consulted. * * * Unless any local usage to the contrary is proved, the hundi, before us being in vernacular, we think that the

Notice in case of hundis.

(*a*) *Kuttayan* v. *Palaniappa*, 27 Mad. 540; Cf. *Krishnaji* v. *Rajmal*, 24 Bom. 360; see *Soward* v. *Palmer*, (1818) 8 Taunt, 277; *Bridges* v. *Berry*, (1810) 3 Taunt, 130.

(*b*) *Roscow* v. *Hardy*, (1810) 12 East. 434; *Dunn* v. *O'Keefe*, (1816) 5 M. & S. 282; B. of Ex. Act, sec. 48 (1).

(*c*) *Roscow* v. *Hardy*, (1810) 12 East, 434; *Bartlett* v. *Benson*, (1845) 14 M. & W. 733.

(*d*) Daniel, sec. 92; *Miers* v. *Brown*, (1843) 11 M. & W. 372; *East* v. *Smith*, (1847) 16 L. J. Q. B. 292; *Cory* v. *Scott*, (1820) 3 B. & Ald. 619; Re, *Leeds Banking Co.*, (1865) L. R. 1 Eq. 1.

(*e*) *Fenwick, Stobart & Co.*, Re, (1902) 1 Ch. 507.

(*f*) *Hartley* v. *Case*, (1825) 4 B. & C. 339; 55 M. L. J. (N. R. C.) 34.

(*g*) *Krishna Shet Bin* v. *Hari Valji*, 20 Bom. 488.

(*h*) *Moti Lal* v. *Moti Lal*, 6 All. 78; *Madho Ram* v. *Durga Prasad*, 33 All. 4.

Sec. 94.

doctrine of notice of dishonour as propounded in the Negotiable Instruments Act may with propriety be applied, the reasonable time within which it is to be given being determined according to the circumstances of each case."

But, the distinction between the rules laid down by the Bombay and Allahabad High Courts is important, because, while the Allahabad High Court bases the application of the Act to hundis, on the ground of the reasonableness of the rules in this Act; the Bombay High Court insists on its application as a matter of course, in the absence of any local usage to the contrary. The latter view seems to be more correct, as it accords with the strict construction of the wording of section 1. Even before the passing of this Act, there was a divergence of judicial opinion about the necessity of giving notice of dishonour to the drawer or an indorser of a hundi, in order to charge him. One set of cases held, that though prompt notice of dishonour was not necessary under the Hindu law or according to mercantile usage prevailing in India, notice of dishonour should be given within a reasonable time (*a*); while the other set of cases laid down that notice of dishonour need not be given at all, (*b*) and that the holder might recover the amount of the hundi from the drawer or any indorser, unless he had sustained damage by reason of failure to give notice of dishonour. There is also authority for the position, that notice of dishonour is not necessary under Mahomedan law. All that is required by that law is, that demand for payment from the person sought to be charged should be made within a reasonable time. (*c*)

Mode in which notice may be given.

94. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is

---

(*a*) *Megraj Jagannath* v. *Gokaldas Mathura Das*, 7 B.H.C.R. (O.C.J.) 137; *Tulshi Sahu* v. *Nursingram*, 12 C. L. R. 333; *Radha Gabind* v. *Chumder Nath*, 6 W. R. 301; *C. W. Joseph* v. *E. R. Solano*, 9 B. L R. 441; *Jeetun Lall* v. *Sheochurn*, 2 W. R. 214; *Anunt Ram* v. *Nuthall*, 21 W. R. 62; *Huree Mohun* v. *Krishno Mohun*, 17 W. R. 442; *Gopal Dass* v. *Seetaram*, 3 Agra. 268.

(*b*) *Gobind Ram* v. *Mathoora*, 3 Cal. 339; *T. W. Pigue* v. *Golab Ram*, 1 W. R. 75; *Somari Mull* v. *Bhairo Das Johury*, 7 B. L. R. 431; Cf. *Syud Ali* v. *Gopal Das*, 13 W. R. 420.

(*c*) *Gopinath* v. *Abbas Hossein*, 7 B.L. R. 434 (note.)

given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

NOTES.

This section points out the person to whom notice of dishonour may be given, its form and contents, the time and the place at which it is to be given, and also the means by which it may be given.

Notice to agent authorised.

In addition to the persons mentioned in the last section, notice may be given to a duly authorised agent of the person to whom it is required to be given. The expression "duly authorised" does not signify the purpose for which authority is given. It might mean, authorised to receive notice of dishonour or authorised for any other purpose. But, it is strange to say, that a person authorised for any other purpose can receive a notice of dishonour so as to be binding on his principal. Thus, a notice of dishonour given to the solicitor of an indorser, (*a*) or when a person indorses a bill thus: "In need, at Messrs. X & Co.," a notice of dishonour given to X, (*b*) is not sufficient to charge the indorser, as the solicitor or the bank is not his agent to receive notice of dishonour. When an agent with authority indorses a notice given to him, it may be sufficient to charge the principal, as he is presumed to have authority to receive such notice. (*c*) It has also been held in England, that a notice given to the wife of the indorser (a non-trader) at his house, (*d*) or to a clerk of the indorser who is a merchant, in his counting-house, (*e*) is sufficient; and Chalmers thinks that the rule laid down in those

(*a*) *Crosse* v. *Smith*, (1813) 1 M. & S. 544, 554.

(*b*) Re, *Leeds Banking Co.*, Ex parte *Prange*, (1865) L. R. 1 Eq. 1, 5.

(*c*) Cf. *Firth* v. *Thrush*, (1828) 8 B. & C. 387, 391.

(*d*) *Housego* v. *Cowne*, (1837) 2 M. & W. 348.

(*e*) *Allen* v. *Edmundson*, (1848) 2 Ex. 719, 725.

Sec. 94.

cases, is still good law under the Bills of Exchange Act, which uses the words "in that behalf" similar in sense, to the word "authorised" in this section.

But, it is submitted that the principle laid down in the decisions, cannot be supported on the ground of agency, though it may be argued that it is the duty of the drawer or the indorser of a bill, if he be absent from his place of business or residence, to see that there is some person there to receive notice on his behalf. (*a*) Again, in *Crosse* v. *Smith*, (*b*) the validity of a notice to a clerk in the counting-house, is based on the ground that notice to an agent for the general conduct of the business, is sufficient notice to the principal. However, these decisions can be supported on the ground that the notice has been given at the place of business in the cases relating to merchants, and at the residence of the person in the case of non-traders.

The case of joint drawers and indorsers has been dealt with already. (*c*)

To legal representative.

Notice may be given, when the drawer or indorser is dead, to his legal representative. According to the section, giving such notice is left to the option of the holder or any party giving the notice of dishonour; while under the English law, notice of dishonour, should be given to the legal representative, if there be one, and can be found with the exercise of reasonable diligence. (*d*) Under the Indian as well as the English law, if the party giving notice does not know of the fact of the death of the indorser, a notice addressed to the dead man is a valid notice. (*e*)

It is to be remembered that though notice of dishonour need not be given to a legal representative under this Act, notice of dishonour should be given at the place of business or residence of the person at the time of his death, as the death of a party is not a ground for dispensing with notice of dishonour under section 98.

To the insolvent's assignee.

Notice may be given to the assignee, when the party to whom notice is required to be given, has been declared an insolvent. Under the English law also, it is just as optional. (*f*) But, this provision in the section applies only when the person has been declared an insol-

---

(*a*) Cf. *Housego* v. *Cowne*, (1837) 2 M & W. 348, per Bolland, B.
(*b*) (1813) 1 M. & S. 544.
(*c*) See notes to sec. 93 *ante*, p. 396.
(*d*) Cf. B. of Ex. Act, sec. 49, cl. (9).
(*e*) Sec. 97, *post*; Chalmers (10th Edn.) 187.
(*f*) Re, *Bellman*, (1877) 4 Ch. D. 795.

vent; while under English law, no adjudication declaring bankruptcy is necessary for the operation of the rule.

Is notice to transferor by delivery, necessary ?

Notice of dishonour need not be given to a transferor by mere delivery, as he is neither liable on the bill nor generally on the consideration. But if he is liable on the consideration, as in the case of a bill passed as security for a pre-existing debt or for value of goods ordered, (*a*) the transferor seems to be entitled to notice of dishonour, though there is much confusion in the case-law on the subject in England. Though Abbot, C. J., says that a person "who does not subject himself to the obligations on the bill is not entitled to its advantages," the better rule seems to be that laid down by Coleridge, J., after a consideration of all the authorities on the subject in *Turner* v. *Stones*, (*b*) where he says: "I think the obligation on the holder is to give notice promptly to the party from whom he receives the note." The case of a guarantor has been already noticed under the preceding section, and neglect to give notice does not discharge him, unless he has thereby sustained any damage. (*c*) In giving notice of dishonour to persons not liable on the instrument, but on the original consideration, the rules relating to giving notice to the parties to the instrument do not strictly apply. It has been also held in England, that in a suit upon a bond given by the indorser as a collateral security, absence of due notice cannot be set up as a defence. (*d*)

Notice, oral or written.

Notice may be oral or written under the section (*e*); it may be partly written and partly verbal. If written, it may be supplemented or validated by verbal communications. The Courts are inclined to construe a verbal notice more liberally than a written notice, and it has been held that a verbal notice is good where the same words, if in writing, might be held insufficient. (*f*) But, the mere fact that the payee of a hundi met the drawer some time after the maturity and that he demanded payment, is not a sufficient notice. (*g*) Notice does not mean mere knowledge, but actual notification; for, a man who can be shown to have known beforehand that the bill would be dishonoured, is nevertheless entitled to notice. (*h*) In England, under

(*a*) *Camidge* v. *Allenby*, (1827) 6 B. & C. 373; *Robson* v. *Oliver*, (1847) 10 Q. B. 704; *Van Wart* v. *Woolley*, (1824) 3 B. & C. 439, 445; *Swinyard* v. *Bowes*, (1816) 5 M. & S. 62.

(*b*) (1843) 1 Dow. & L. 122 (notes), 131; Cf. *Smith* v. *Mercer*, (1867) L. R. 3 Ex. 51; Chalmers (10th Edn.) 197.

(*c*) See the notes to sec. 93, p. 393 *ante*.

(*d*) *Murray* v. *King*, (1821) 5 B. & Ald. 165.

(*e*) *Cf.* B. of Ex. Act, sec. 49 (5); *Phillips* v. *Gould*, (1838) 8 C. & P. 355.

(*f*) *Metcalfe* v. *Richardson*, (1852) 11 C. B. 1011.

(*g*) *Sobhomal* v. *Pohumal*, 13 I. C. 255; *Hartley* v. *Case*, (1825) 4 B & C. 339

(*h*) *Burgh* v. *Legge*, (1839) 5 M. & W. 418; *Caunt* v. *Thompson*, (1849) 18 L. J.C.P. 125, 127; *Miers* v *Brown*, (1843) 11 M & W. 372; *East* v. *Smith*, (1847) 16 L.J.Q.B. 292; *Cory* v. *Scott*, (1820) 3 B. & Ald 619; Re *Leeds Banking Co.*, (1865) L. R. 1 Eq. 1; *Cf. Deep Sea Fishery Co's claim*, (1902) 1 Ch. 507.

Sec. 94.

the Bills of Exchange Act, a simple return of a dishonoured bill to the drawer or indorser is, in point of form, deemed a sufficient notice of dishonour, and the same rule applies to notes as well. (*a*) Under the Indian law, such a return will not be sufficient, as it does not fulfil the conditions required by the section.

Notice in person or through messenger or by post.

Notice of dishonour may be given in person, (*b*) or it may be sent through a messenger. (*c*) Even if the messenger is unable to leave the message owing to the place being shut up, the notice will be treated as having been duly given. (*d*) The notice may even be sent by post ; whether a notice by telegram will be good or not is not clear. The section does not sanction such a procedure. Verbal notice can only be sent through a messenger, while a written notice may be sent either by a messenger or by post ; but it is always safer to send it by post. For, when notice is sent by a messenger, the person sending such notice will be liable for the delay of the message, even when the delay is due to accidents happening to the messenger (*vis major* excepted) ; while in the case of delay or mis-carriage by post-office authorities, he will be absolved from responsibility. Again, if the notice be not communicated by the special messenger till after the day when it would have been conveyed by the post, it would not be valid, (*e*) though such notice would be a valid one, if it arrived on the same day later than the post-time, but within business hours. (*f*)

If by post, to be duly directed.

The notice, if by post, must be duly directed ; a notice sent to the place mentioned in the bill or to the ostensible place of business, (*g*) or to the only known address, (*h*) is sufficient, though the addressee may have changed his residence or place of office. The notice may also be sent to the place where the party lives or carries on business at the time, though the address given in the bill is different. (*i*) If the party fails to give the correct address, or is guilty of negligence in writing the address, so that the notice is not received by the addressee, the holder cannot rely on such notice. If the notice is directed to a person in a large town, the residence and the part of the town where he resides must be specified ; for example, a notice directed to 'Ramasamy in Madras' cannot be said to be duly directed. (*j*)

(*a*) B. of Ex. Act, sec. 49 (6).

(*b*) *Metcalfe* v. *Richardson*, (1852) 11 C.B. 1011.

(*c*) *Pearson* v. *Crallan*, (1805) 2 Smith, (K.B.) 404.

(*d*) *Crosse* v. *Smith*, (1813) 1 M & S 544 ; *Allen* v. *Edmundson*, (1848) 2 Ex. 719.

(*e*) *Darbishire* v. *Parker*, (1805) 6 East 3.

(*f*) *Bancroft* v. *Hall*, (1816) Holt's N. P. C. 476.

(*g*) *Berridge* v. *Fitzgerald*, (1869) L. R. 4 Q. B. 639.

(*h*) *Shelton* v. *Braithwaite*, (1841) 8 M. & W. 252.

(*i*) Re *Bellman*, (1877) 4 Ch. D. 795.

(*j*) Cf. *Walter* v. *Haynes*, (1824) 1 Ry. and Moo. 149.

But, if the person who is sought to be charged is himself guilty of negligence in giving his address on the bill, or gives his address in a vague and general manner, (*a*) or again, if he writes his address indistinctly, (*b*) he is not relieved from liability when the fault in the address is due to that circumstance. Where notice was by mistake sent to the wrong branch of a large bank, a subsequent telegram correcting the address has been held to be sufficient. (*c*)

And put in post-box.

Notice of dishonour should be put in the post-box. Mere delivery to a bell-man in the street was held not to be sufficient in England, (*d*) though he is regarded as an ambulatory post-office in some cases. (*e*) Delivery of the notice to a post-peon or a runner in order to post the notice, is not sufficient. It is not necessary to prove in the case of a notice sent by post, that the addressee received the notice. (*f*) It has been held in England, that general evidence of the course of business of a counting-house where all the letters placed on the table were carried to the post-office, is not sufficient to prove that a notice of dishonour was posted. (*g*) Lord Ellenborough said while delivering the judgment: "you must go farther; some evidence must be given that the letter was taken from the table in the counting-house and put into the post-office. Had you called the porter, and he had said that although he had no recollection of the letter in question, he invariably carried to the post-office all the letters found upon the table, this might have done; but I cannot hold the general evidence of the course of business in the plaintiff's counting-house to be sufficient." Though this is a safe rule to follow in India, a Judge may presume the fact of posting in such cases from a common course of business, under section 114 of the Evidence Act, and illustration (f) of that section. The post-marks of the town or country are evidence showing that the letters on which they are, were in the office at the time and on the dates of such marks, though they are not conclusive on the point. (*h*) If a notice is posted by the holder in due time he is not prejudiced, if through mistake or delay of the post office, it be not delivered in due time. (*i*)

(*a*) *Mann* v. *Moors*, (1825) 1 Ry. and Moo. 249; *Clarke* v. *Sharpe*, (1838) 3 M. & W. 166; *Siggers* v. *Brown*, (1836) 1 Moo. and Rob. 520; *Burmester* v *Barron*, (1852) 17 Q. B. 828, 832; *Esdaile* v. *Sowerby*, (1809) 11 East. 114.

(*b*) *Hewitt* v. *Thomson*, (1836) 1 Moo. and Rob. 543.

(*c*) *Fielding & Co.* v *Corry*, (1898) 1 Q. B. 268.

(*d*) *Hawkins* v. *Rutt*, (1793) 1 Peake, 248.

(*e*) *Skilbeck* v. *Garbett*, (1845) 7 Q. B. 846, per Lord Denman.

(*f*) *Cf.* B. of Ex. Act, sec. 49 (15) *Saunderson* v. *Judge*, (1795) 2 H. Bl. 509.

(*g*) *Hetherington* v. *Kemp*, (1815) 4 Camp. 193; see also *Hawkes* v. *Salter*, (1828) 4 Bing. 715; *Skilbeck* v. *Garbett*, (1845) 7 Q. B. 846.

(*h*) *Stocken* v. *Collin*, (1841) 7 M. & W. 515.

(*i*) *Woodcock* v. *Houldsworth*, (1846) 16 M & W. 124; *Stocken* v. *Collin*, (1841) 7 M & W. 515.

Sec. 94.

Form of notice.

Notice may be in any form, *i. e.*, it is not necessary to use a particular form or a particular set of words. (*a*) Again, it need not be signed. (*b*) But it must inform the party to whom it is given, either in express terms or by reasonable intendment (i) that the instrument has been dishonoured, (ii) in what way, and (iii) that he will be held liable thereon. The conditions required under the Act are more exacting than those under the corresponding provision of the English Act which says: "A notice may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment"; and it appears that the Committee in England to which the bill was referred, struck out the words "that he will be held liable thereon." The Indian Legislature adopted the rule laid down in the earlier cases decided in England, (*c*) as a safer one to be applied in India; while the Bills of Exchange Act enacted the rule laid down in later cases. (*d*) The words "reasonable intendment" are borrowed from the judgment of Baron Parke in *Hedger* v. *Steavenson*, (*e*) which expression was substituted by that learned Judge for "necessary implication," as being more elastic, while the expression "necessary implication" (*f*) may be construed as excluding the possibility of any other inference. The notice must point out either expressly or impliedly that the instrument has been dishonoured. A demand made on the indorser by the indorsee for payment of money on the failure of the maker to pay, has been held to be sufficient notice of dishonour. (*g*) In England, a notice stating that the bill lies dishonoured at A's, or that "acceptance is unpaid and immediate intention is requested", or "that the draft is unpaid, and unless paid immediately, proceedings will be taken," has been held to be good. Notices are liberally construed so much so Chalmer's states that since 1841 no notice of dishonour has been held bad on the ground of insufficiency of form. (*h*) The English cases on the subject cannot be applied without examining them in the light of words of the section.

Notice must identify the instrument.

The instrument should be identified in the notice, otherwise, the notice will not be a valid one. At any rate, a mis-description in the notice, which misleads the party to whom it is given, vitiates the notice, (*i*) but one not misleading the party is immaterial. Notice of

(*a*) *A.B. Miller* v. *The National Bank of India*, 19 Cal. 146, 155.

(*b*) *Cf.* B. of Ex. Act, sec. 49 (7); *Maxwell* v. *Brain*, (1864) 10 L. T. N. S. 301.

(*c*) *Tindal* v. *Brown*, (1786) 1 T. R. 167; *Hartley* v. *Case*, (1825) 4 B. & C. 339; *Solarte* v. *Palmer*, (1834) 1 Bing. N. C. 194.

(*d*) *Everard* v. *Watson*, (1853) 1 E. & B. 801; *Paul* v. *Joel*, (1859) 4 H. & N. 355.

(*e*) (1837) 2 M. & W. 799.

(*f*) Cf. *East* v. *Smith*, (1847) 4 Dow. & L. 744.

(*g*) (1920) M. W. N. (sh. n.) LXV.

(*h*) See the cases noted in Chalmer's (10th. Edn.) p. 184.

(*i*) *Bromage* v. *Vaughan*, (1846) 9 Q. B. 608.

a bill being dishonoured without giving its date or place, was held to be insufficient as against an indorser; but if there be no other bill to which the notice can apply, it lies on the defendant to prove that he was misled. (*a*) Trivial mis-descriptions in giving the names of parties or calling a note as a bill (*b*) or *vice versa* (*c*) or transposing the characters of the drawer and the acceptor, (*d*) or in describing a bill at A's bank instead of at B's bank, (*e*) will not vitiate the notice.

Need not state presentment.

The section does not require that the notice should contain a statement that the bill had been duly presented for acceptance or for payment, and therein it follows the rule laid down by Lord Campbell in *Everard* v. *Watson*. (*f*) What it requires is that it should inform the party about the fact of dishonour, and how; unless the word 'dishonoured' be used, it would be safer to mention in the notice that the instrument was presented for acceptance or for payment, as the case may be, and such acceptance or payment was refused.

Should state how dishonoured.

Notice should further inform the person in what way the instrument has been dishonoured, *i.e.*, whether the instrument has been dishonoured by non-acceptance or by non-payment. It need not state the reasons given by the person for such dishonour. A statement in the notice, of a mere demand for payment is not however sufficient, and in *Hartley* v. *Case*, (*g*) it is said: "There is no precise form of words necessary to be used in giving notice of the dishonour of a bill of exchange, but the language used must be such as to convey notice to the party what the bill is, and that payment of it has been refused by the acceptor." Thus, a notice given by an attorney on behalf of the holder that the bill in question had been put into his hands with directions to take legal measures for the recovery thereof, unless immediately paid, is a bad notice, as it does not state that the blll had been dishonoured either by non-acceptance or non-payment. (*h*)

'On whose behalf.'

It has been held that notice of dishonour need not state on whose behalf payment is applied for, nor where the bill is lying; (*i*) and a mis-description of the place where the bill is lying is immaterial (*j*),

(*a*) *Shelton* v. *Braithwaite*, (1841) 7 M. & W. 436.

(*b*) *Stockman* v. *Parr*, (1843) 11 M. & W. 809.

(*c*) *Messenger* v. *Southey*, (1840) 1 M. & Gr. 76.

(*d*) *Mellersh* v. *Rippen*, (1852) 7 Ex. 578.

(*e*) *Bromage* v. *Vaughan*, (1846) 9 Q. B. 608.

(*f*) (1853) 1 E. & B 801; but *Solarte* v. *Palmer*, (1834) 1 Bing. N. C. 194.

(*g*) (1825) 4 B. & C. 339.

(*h*) *Solarte* v. *Palmer*, (1834) 1 Bing. N. C. 194.

(*i*) *Woodthorpe* v. *Lawes*, (1836) 2 M. & W. 109.

(*j*) *Rolands* v. *Springett*, (1845) 14 L. J. Ex. 227.

Sec. 94.

unless a tender was made there. If the notice, by mistake mis-describes the party giving it, it is nevertheless good. But the party who receives the notice is not to be prejudiced in any way, and he is entitled to take any objection as to the ability of the party who is named in the notice to give such notice, as where he had been already discharged by *laches* of the holder. (*a*)

Should state that party is held liable.

It should further appear from the notice, either expressly or impliedly, that the party to whom it is given will be held liable on the instrument dishonoured. As has already been observed, the Indian Legislature adopts the rule laid down in the earlier English cases, though a distinction existed in England at that time, between the case of a holder giving notice and that of an indorsee giving one. (*b*) It was held there, that notice given by an indorsee other than the holder, should state, that the party to whom the notice is given will be held liable, though such a statement is not necessary in a notice given by the holder. In India, there is no such distinction, and the Indian Act may be said to follow with some modification the rule laid down in *Solarte* v. *Palmer* (*c*) by Tindal, J., who says, "the notice of dishonour which is commonly substituted in this country in the place of a formal protest, certainly does not require all the precision and formality which accompany the regular protest for which it has been substituted. But, it should at least inform the party to whom it is addressed either in express terms or by necessary implication that the bill has been dishonoured and that the holder looks to him for payment of the amount." Unless, therefore, the notice of dishonour informs the party that he will be held liable thereon, it will not be a valid notice. (*d*)

Within a reasonable time.

Notice should be given within a reasonable time of dishonour. (*e*) As to what is reasonable time, see the notes to sections 106 and 107.

Sent to place of business or residence.

Nextly, the notice must be addressed to the place of business ; and if there be none, then to the residence. Place of business of a party is where he usually transacts his business ; and not one, which he has no particular right to use for business, though he may occasionally go there and sometimes transact business also. It is open to the holder and any party entitled to notice, to fix by previous agreement a place to which

(*a*) *Harrison* v. *Ruscoe*, (1846) 15 M. & W. 231.

(*b*) *East* v. *Smith*, (1847) 16 L. J. Q. B. 292 ; *Furze* v. *Sharwood*, (1842) 2 Q. B. 388 ; *C F. Chard* v. *Fox*, (1849) 14 Q. B. 200

(*c*) (1834) 7 Bing 530, affirmed in 1 Bing N. C. 194.

(*d*) *Jambu* v. *Palaniappa*, 26 Mad. 526.

(*e*) *Jaggannath* v. *Ram Das*, 25 I. C. 881 ; *Jagannadha* v. *Lakshmana*, 47 M L. J. 475.

notice of dishonour may be sent. It does not matter in that case that the transmission of notice thither, and thence to the prior parties, will occupy more time than if the notice should pass through the ordinary place of business or residence. (*a*) Such notice is good not only against the party making the agreement, but also against the prior parties. If there is no place of business, the notice may be left at the dwelling house of the person entitled to it; and if he is absent from home, the notice may be left at the house, or with his family, if found.

If the holder is not aware of the place of business or residence of the person, he must use due diligence to ascertain the place; and the same course, it seems, will have to be followed by the holder, if the party entitled to notice has removed from the old place of business or residence unknown to the holder. If reasonable diligence is used, notice given as soon as the place or residence is discovered after such diligence, is due notice of dishonour. (*b*)

Party receiving must transmit notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

NOTES.

Notice by parties other than the holder.

Under section 93, a notice from the holder or any other party liable on the bill will enure for the benefit of every other party who stands between persons giving notice and the persons to whom it is given. But it is not always safe for a person receiving notice of dishonour, to keep quiet; it will be more prudent for him to give immediate notice to antecedent parties, for the holder may have contented himself by fixing the liabilities of his own and that of parties subsequent to him, and may have omitted to give notice to some or all of those above him, against whom he may have a right of claim. In that case, he may be left remediless altogether, or he may lose his remedy against some of them. All these difficulties may be easily overcome by the party giving notice to parties prior to him. This course is advantageous in another way also. The notice given by the holder or any other person may not be quite in form, or may be open to some

(*a*) *Shelton* v. *Braithwaite*, (1841) 8 M. & W. 242.

(*b*) See the notes at pages 399, 400 & 402 *ante*.

Sec. 96.

other objection, and it may happen also that there may be difficulties in proving such notice.

This section provides that where a party receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after dishonour, *i.e.*, reasonable time. (*a*) As to what is reasonable time see notes to sections 106 and 107.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

NOTES.

Agent entitled to time, as holder.

The section reproduces the English law on the subject. (*b*) If a bill is dishonoured in the hands of an agent, either he or his principal may give notice of dishonour; or the agent may himself give notice to all parties liable on the bill or note, or give notice of dishonour to his principal. If the agent gives notice to his principal, he must do so in the same time as if he were the holder of the bill giving notice to a drawer or indorser. The principal too in his turn has the same time for giving notice, as if the agent is an independent holder. Thus, a bill due on the 4th, was presented for payment that day by the payee's bankers and dishonoured; on the 5th, it was returned to the payee who in the course of the 6th, sent the letter to the drawer by the two-penny post. It was held in that case, that this was sufficient notice and that it was given in time. (*c*) Similarly, a county banker has an entire day after receiving notice of dishonour of a bill payable in London to transmit the same to his customers, so that notice by the next day's post is in time. (*d*) In like manner, a solicitor employed by the holder to find out the address of the indorser and to address a notice of dishonour to the parties has been held to be an agent, and that he was entitled to a day to communicate with his principal (the customer,) and if his principal gave notice on the next day, there was

(*a*) *Cf.* B. of Ex. Act, sec. 49 (14).
(*b*) B. of Ex. Act, sec. 49 (13).
(*c*) *Scott* v. *Lifford*, (1808) 9 East. 347.
(*d*) *Bray* v. *Hadwen*, (1816) 5 M. & S. 68.

no *laches* on his part. (*a*) The position of branch-banks is, that in principle and in fact they are agencies of one principal banking corporation or firm; but, however, they are regarded as distinct for the purpose of estimating the time in which notice of dishonour should be given. Thus, where a bill was indorsed to the branch of the National Provincial Bank of England at Portmadoc which sent it to the Pwllheli branch of the same bank, which indorsed it to the head establishment in London, it was held that each of the branch-banks was to be considered as an independent indorser, and that each was entitled to a day for giving notice of dishonour. (*b*)

Acceptor for honour.

An acceptor for honour of one of the indorsers on a bill is also treated as his agent for the purpose of computing the time within which notice of dishonour is to be given. Thus, where upon a bill being dishonoured, a person paid the same for the honour of one of the indorsers who was resident abroad at Bruges and communicated with him the same day by posting the bill, and he at once sent a notice to the payer for honour who forthwith gave notice to the drawer, it was held that although six days had elapsed since the date of dishonour, the notice was in time and that the payer could sue the drawer. (*c*)

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

NOTES.

Under section 94, an option is given to the holder to give notice to the legal representatives, if the person to whom the notice is to be given is dead. But, if the person giving notice is not aware of the fact of death of the person, his notice to the deceased person is not thereby invalid. If the party knew of the death, it is not clear if a notice addressed to the deceased is valid or not. Considering that section 94 is only permissive, it would seem that such notice is not invalid. However, addressing the notice to a deceased person knowing of his death, and sending it by post, is certainly not duly directing the letter as laid down in section 94, and notice in such cases will be

(*a*) *Firth* v. *Thrush*, (1828) 8 B. & C. 387.

(*b*) *Clode* v. *Bayley*, (1843) 12 M. & W. 51; *Prince* v. *Oriental Bank Corporation*, (1878) 3 A.C. 325, 332; *Fielding & Co.* v. *Corry*, (1898) 1 Q. B. 268.

(*c*) *Goodall* v. *Polhill*, (1845) 14 L. J. C. P. 146.

Sec. 98.

held invalid. But, a notice sent by a messenger or communicated personally must be made to the residents of the house of the deceased, or left at the residence or place of business of the deceased person.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

(a) when it is dispensed with by the party entitled thereto;

(b) in order to charge the drawer when he has countermanded payment;

(c) when the party charged could not suffer damage for want of notice;

(d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason unable without any fault of his own to give it;

(e) to charge the drawers when the acceptor is also a drawer;

(f) in the case of a promissory note which is not negotiable;

(g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

NOTES.

Notice unnecessary.

In a suit on a dishonoured bill of exchange, notice of dishonour is absolutely necessary to give plaintiff a cause of action. Notice can only be dispensed with under the circumstances mentioned in this section. (*a*) The section points out when notice of dishonour is unnecessary :—

When dispensed with.

(a) It is not necessary to give notice to a party who has dispensed with it. In that case, he will be held bound, without

(*a*) *Mithan* v. *Paltu*, 14 I. C. 51; *Ram Singh* v. *Gulab Rai*, 1 Lah. 262.

any notice. So, where the drawer of a bill, a few days before maturity, stated to the holder that he had no regular residence, and would call and see if the bill had been paid by the acceptor, it was held that by such agreement, he had dispensed with notice and was not entitled to any. (*a*) Again, where the indorser told the holder that the bill would not be paid and that there was no use in sending him a two-penny post letter for giving notice, and promised to send the money in part-payment on a future day, it was held that the notice was dispensed with. (*b*) When the drawer of a bill informed the holder that it would not be paid on presentment, it was held that it was sufficient to dispense with notice of dishonour. (*c*) One mode of dispensing with such notice is, that when the drawer in drawing or the indorser when indorsing adds the words "notice of dishonour waived." The waiver of notice under this clause need not be at the time of drawing or indorsing, and it may be subsequent to it and indeed at any time before dishonour. Agreements of this sort are construed strictly; and a waiver of presentment is not a waiver of notice. (See notes to section 76, cl. (c).) Waiver of notice of dishonour in favour of the holder enures for the benefit of all the parties coming after him, (*d*) but a waiver of notice of dishonour by an indorser will not affect the liability of an indorser prior or subsequent to him. Such dispensing with notice must of course be clear and unequivocal. Thus, if the drawer of a bill, knowing the acceptor to be insolvent, says to the indorser, "I suppose I shall have to take up the bill. If you will call with it in a few days I will pay you," this was held not to be sufficient to dispense with notice of dishonour. (*e*) Again, when the drawer applied on behalf of the acceptor for time, it was held that it was evidence from which a jury might infer that he had authorised an arrangement for renewal, dispensing with notice of dishonour, and after dispensation, no notice was necessary. (*f*)

When payment countermanded.

(b) The drawer is not entitled to notice of dishonour when he has countermanded payment. In this connection, Abbot, C. J. says: "I am clearly of opinion that the defendant's order to the payer not to pay the bill, if it was presented, did amount to a dispensation of the notice of dishonour, but I am equally decided in my opinion that it formed no excuse for the non-presentment for payment, for I find

(*a*) *Phipson* v. *Kneller*, (1815) 4 Camp. 285.

(*b*) *Burgh* v. *Legge*, (1839) 5 M. & W. 418.

(*c*) *Brett* v. *Levett*, (1811) 13 East. 213, 214.

(*d*) *Rabey* v. *Gilbert*, (1861) 30 L. J. Ex. 170.

(*e*) *Pickin* v. *Graham*, (1833) 1 Cr. & M. 725.

(*f*) *North Staffordshire Loan Co.* v. *Wythies*, (1861) 2 F. & F. 563.

Sec. 98.

the very distinction taken by Lord Ellenborough in *Prideaux* v. *Collier.*" (*a*) It is based on the ground that the drawer having put an impediment in the way of the holder obtaining payment, is not entitled to notice. (*b*)

When no damage to party.

(c) Notice is not necessary to charge a party who could not suffer damage for want of it. The leading case on the subject is *Bickerdike* v. *Bollman*, (*c*) where it was held that no notice was necessary to charge the drawer, when he had no funds in the hands of the drawee. The broad rule laid down in that case was modified in later cases, and the present rule in England is the same as that stated in this section. Thus, no notice of dishonour is necessary where the drawees were under no obligation to the drawers to accept the bills, and where the acceptance of the bills was illegal, as where it would amount to trading with the enemy. (*d*) (See notes to section 76, cl. (d).) It is to be remembered that cl. (c) of this section is wider than cl. (d) of section 76, as this clause treats not only of drawers, but also of indorsers. All considerations which apply to cases of excuses for non-presentment for payment, equally apply to cases of notice of dishonour, and they have already been fully dealt with under section 76. The onus of showing that a party could not suffer damage is on the party who wants to excuse himself for the non-presentation. (*e*)

When party's residence not found.

(d) Ignorance of a party's residence excuses omission to give notice, for it would be hard when the holder of a bill does not know where the indorsers are to be found, if he lost his remedy by not communicating immediate notice of dishonour of the bill and the law lays down no such rule. (*f*) However, the holder is bound to make due inquiries to ascertain the place of business or residence of the person whom he wants to give notice to, and he must not allow himself to remain in a state of contented and passive ignorance ; and if, after the exercise of reasonable diligence, he cannot find the party, notice in such cases is obviously impossible. It is hardly necessary to point out that after the cause of the delay is removed, that is, in the present case, if the address is found, notice must be given within reasonable time, such time being calculated not from the date of dishonour but from the date of discovery of the address. (*g*)

(*a*) (1817) 2 Stark. 57.

(*b*) Cf. *Hill* v. *Heap*, (1823) Dow. & Ry. (N. P.) 57.

(*c*) (1786) 1 T. R. 405.

(*d*) *Sukhlall* v. *Eastern Bank*, 46 Cal. 584.

(*e*) *Madho Ram* v. *Durga Prasad*, 33 All. 4 ; *Gaya Din* v. *Sri Ram*, 15 A.L.J. 267 ; *Jhanda Ram* v. *Toda Mal*, 10 I. C. 405.

(*f*) *Bateman* v. *Joseph*, (1810) 12 East. 433.

(*g*) *Firth* v. *Thrush* (1828) 8 B. & C. 387 ; *Dixon* v. *Johnson* (1855) 1 Jur. N. S. 70.

Sec. 98.

This does not absolve the holder from giving notice altogether. The time spent in making the necessary inquiries relating to the parties is not to be imputed to *laches*, and the delay will be excused, if after such time, notice is given without undue delay. (*a*) Where the holder failed to find the drawer at the address given, yet was afterwards, but before action was brought, informed of a place where the drawer was to be found, he was held not to be absolved from the duty of giving notice. (*b*) But, where, on the morning after the bill was dishonoured, the holder applied to his indorser for information as to the residence of the drawer, and his indorser was out at the time, although he obtained the information late in the day and then posted the notice to the drawer, and the notice did not reach the drawer that day, as it should have done, it was held under the circumstances that he had acted with reasonable diligence and that therefore the notice was sufficient. (*c*)

When prevented by accident, etc.

Again, any inevitable accident or overwhelming calamity preventing notice from being given and not attributable to any default, misconduct, or negligence of the party giving notice, will be held to be sufficient cause for excusing the omission to give due notice; but where owing to dangerous illness, a person had to leave his business, it was held not to be an excuse for not giving notice. Possibly, the delay may be excused by special circumstances. (*d*) 'As in cases of presentment for payment, all that is required of the holder is reasonable diligence on his part consistent with the general convenience of the commercial world and practicability of giving notice with ordinary effort and prudence. This necessarily implies an exception in favour of unavoidable accidents, and if the delay caused by them, if due to circumstances beyond the control of the party giving notice, such delay is excused; but notice must be given with reasonable diligence when the cause of the delay ceases to operate.' The delay caused by the wrong address (*e*) given by the indorser, the sudden illness or death of the holder or agent at the time of giving notice are such instances. Another instance of special circumstance is furnished by *Lindo* v. *Unsworth*. (*f*) There the sender was a Jew, and to have sent the notice within the required time would have involved the desecration of a sacred holiday. He delayed sending accordingly and was held to have shown special circumstances. (See notes to section 76.)

(*a*) *The Elmville*, (1904) p. 319.

(*b*) *Studdy* v. *Beesty*, (1889) 60 L. T. N. S. 647 (C.A.).

(*c*) *Gladwell* v. *Turner*, (1870) L. R. 5 Ex. 59; *Baldwin* v. *Richardson*, (1823) 1 B. & C. 245.

(*d*) *Turner* v. *Leech* (1821) 4 B. & Ald. 451; Chitty (XI Edn.) 226

(*e*) *Hewitt* v. *Thomson*, (1836) 1 Mood & Rob. 543.

(*f*) (1811) 2 Camp. 602.

Sec. 98.

When drawer, one of the acceptors.

(e) This clause is founded on the case of *Porthouse* v. *Parker.* (*a*) In an action against the drawer of a bill of exchange drawn by a firm upon one partner, Lord Ellenborough held that the acceptor being likewise the drawer, there would be no occasion for the plaintiff to prove that the defendants had received express notice of the dishonour of the bill, as this must necessarily have been known to one of them, and the knowledge of one, in the case of partners, was the knowledge of all. This is well indicated in the section, for the use of the singular 'drawer' followed by the plural 'drawers' in clause (e) shows, that if the acceptor is one of the drawers, both the drawers would be liable even though no notice of dishonour has been given. (*b*) In the converse case, as where one of several partners draws upon a firm of which he is a member, it would appear that he is not entitled to notice in case of dishonour either in the case of an accepted or of an unaccepted bill. (*c*) If, however, the co-partnership had been dissolved before the bill is drawn, notice will be necessary. In the case of a member being common to two partnerships having transactions in bills of exchange, the question is somewhat difficult to decide. Yet, on the principle of the case of *Jacaud* v. *French*, (*d*) it may be held that no notice of dishonour is necessary to either firm, when one has accepted the bill drawn by the other. This principle applies, as will be seen, from the wording of the section not only to cases of partnerships, but also to cases of all joint drawers when one of them is an acceptor, perhaps on the ground that such joint drawers are to be treated as partners, so far as the transaction on the negotiable instrument is concerned. In England, this rule has been held applicable to cases of firms drawing upon their branches. (*e*)

From this section, the rule may be deduced that, when on a bill of exchange the drawer and the acceptor are the same person, notice of dishonour is not necessary in order to charge the drawer. Because, the acceptor being likewise a drawer, and he having dishonoured the bill, must know of the fact of such dishonour, and hence no formal notice of dishonour is necessary to appraise him of that fact. The same principle will apply if the drawer and the drawee of a bill are the same person. The mere fact that the drawer and acceptor of a bill are partners does not give rise to the presumption that they are partners in respect of the drawing of the bill, or that the bill was drawn by one of them on behalf of both. (*f*) In such a case, the acceptor is not also a

(*a*) (1807) 1 Camp. 82; *Jambu Ramaswamy* v. *Sundarara,a Chetty*, 26 Mad. 239.

(*b*) *Kundan Lal* v. *Bhikari Das*, 51 All. 530.

(*c*) Daniel, sec. 1086.

(*d*) (1810) 12 East. 317.

(*e*) *Miller* v. *Thomson*, (1841) 3 M. & Gr. 576; *Allen* v. *Sea, Fire and Life Assurance Co.*, (1850) 9 C. B. 574.

(*f*) *Jambu Ramaswamy* v. *Sundararaja Chetty*, 26 Mad. 239.

drawer so as to render notice of dishonour unnecessary. It is to be noticed that this clause is confined in its operation to cases of accepted bills. The same principle would apply to unaccepted bills also, and it is not clear why they are not included here.

Sec. 98.

(f) Under the Indian law as it now stands, a promise to pay some person containing words which prohibit transfer or indicate an intention that it shall not be transferable, is a promissory note but not negotiable; and if such a note is indorsed, the indorser can have no claim against the maker of the instrument or other indorsers. (*a*) The note being thus not negotiable, no one would be prejudiced by its non-presentment or want of notice, and the assignee of it cannot claim the advantages under the Act.

When note not negotiable.

(g) A promise by a person to pay unconditionally the amount due under the instrument after dishonour, with full knowledge of the facts, (*b*) is one of the instances of waiver of notice, and is akin to the subject of waiver after maturity of presentment for payment, already dealt with under section 76, cl. (c). A promise to pay may operate either as evidence of notice of dishonour or as a prior dispensing with or as a subsequent waiver of, notice. (*c*) A promise to pay, if made before the time for giving notice has expired, is a dispensation; if made after that time is a waiver, independently of any question of notice. (*d*) And a payment of part or an acknowledgment of liability will be evidence of notice. (*e*) Notice of dishonour may be waived expressly or by implication. Where an indorser, who had not received notice of dishonour, on being told that the holder was going to sue him, said he would pay if given time, (*f*) or where the drawer of a bill made payable at his own house, repeatedly promised after its dishonour to pay it, (*g*) it was held that the waiver here was express. Suffering judgment by default in an action by the second indorser is evidence of notice or waiver of notice in an action by the first indorser. (*h*) But, an admission of liability to operate as waiver, must have been made by the person with the full knowledge of the facts; thus, where the drawer of a bill wrote to the holder admitting liability, in ignorance of the fact

When notice waived impliedly.

(*a*) *Plimley* v. *Westley*, (1835) 2 Bing. N. C. 249.

(*b*) *Goodall* v. *Dolley*, (1787) 1 T. R 712; *Hopes* v. *Alder*, (1799) 6 East 16. (n).

(*c*) *Cordery* v. *Colvin*, (1863) 14 C. B. N. S. 374.

(*d*) *Ibid*; *Killby* v. *Rochussen*, (1865) 18 C. B. N. S. 357.

(*e*) *Lundie* v. *Robertson*, (1806) 7 East. 231; *Rogers* v. *Stephens*, (1788) 2 T. R. 713; *Wood* v. *Brown*, (1816) 1 Stark. 217; *Horford* v. *Wilson*, (1807) 1 Taunt. 12.

(*f*) *Mills* v. *Gibson*, (1847) 16 L. J. C. P. 249; *Woods* v. *Dean*, (1862) 32 L. J. Q. B. 1.

(*g*) *Cordery* v. *Colvin*, (1863) 14 C. B. N. S. 374.

(*h*) *Rabey* v, *Gilbert*, (1861) 30 L. J. Ex. 170.

Sec. 98.

that it had not been presented, his admission would not dispense with the duty of the holder to give notice of dishonour. (*a*)

Again, the promise to pay can operate as waiver of notice of dishonour, only if it is made unconditionally. (See notes to section 76 cl. (c).) It may be noted that the word "unconditionally" is not found in section 76, cl. (c).

Onus of proof.

The provisions of section 98 being in the nature of exceptions to the general rule requiring notice of dishonour, any person relying upon these provisions must make the necessary averments in the pleadings, and establish the same. (*b*) Thus, it is on the plaintiff in all cases to show either that he gave notice to the defendant, or that the defendant could not have suffered damage for want of it. This rule with reference to the burden of proof, applies only in cases where the suit is brought on the negotiable instrument, and is not applicable, when the suit is brought upon a collateral security or an indemnity bond, (*c*) or on the original consideration where the burden is shifted on to the shoulders of the defendant, to prove that he has sustained damage by want of reasonable notice. (*d*) Notice means something more than knowledge. (*e*) Thus, if one man was Secretary for two companies, one of them being the drawer and indorser, and the other the indorsee of a bill, and no notice of the dishonour was given, it was held that the knowledge of the Secretary was not to be regarded as equivalent to notice, unless it were shown that it was his duty as regards the indorsee-company to communicate his knowledge to the drawer-company. (*f*)

(*a*) Cf. *Pickin* v. *Graham*, (1833) 1 Cr. & M. 725.

(*b*) *Jambu Ramaswamy* v. *Sundararaja*, 26 Mad. 239, 241; *Amiruddi Bepari* v. *Bahadoor Khan*, 30 Cal. 977; *Moti Lal* v. *Moti Lal*, 6 All. 78; *Jambu* v. *Palaniappa*, 26 Mad. 526; *Madho Ram* v. *Durga Prasad*, 33 All. 4; *Jhanda Ram* v. *Toda Mal*, 10 I. C. 405; *Shridhar* v. *Baxiram*, (1932) Nag. 55.

(*c*) *Shanmugam* v. *Chinnasami*, 14 Mad. 470.

(*d*) *Krishnaji Narayan* v. *Rajmal Manick*, 24 Bom. 360.

(*e*) *Carter* v. *Flower*, (1847) 16 M. & W. 743, 749; *Pickin* v. *Graham* (1833) 1 Cr. & M. 725, 727.

(*f*) Re *Fenwick Stobart & Co.*, (1902) 1 Ch. 507.

CHAPTER IX.

OF NOTING AND PROTEST.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each. **Noting.**

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reasons, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

NOTES.

As soon as a bill or note is dishonoured, the holder has an immediate right of recourse against the drawer and the indorsers (*a*) on the instrument. To enforce that right, he must have given due notice of dishonour as provided for in the last chapter, and this section provides a convenient mode of authenticating the fact of the bill having been dishonoured. Such mode is by noting the instrument, which is a minute made on the bill or note, or on a paper attached to it or partly on the instrument and partly on such paper; there should be specified in it (1) the fact of dishonour, (2) the date of dishonour, (3) the reasons assigned for such dishonour, if any, (4) if the instrument has not been expressly dishonoured, the reasons for the holder treating it as dishonoured, and (5) the notary's charges. All this is done by a notary public who is defined in section 3 *ante*. The advantage of such a course seems to be "that a notary being a person conversant in such transactions, is qualified to direct the holder to pursue the proper conduct in presenting the bill, and may upon a trial, **Noting.**

(*a*) See notes to sec. 30 *ante*.

Sec. 99.

be a convenient witness of the presentment and dishonour." Moreover, "noting being so generally practised, the circumstance of its not having been done, would tend to render the other parties to the bill or note suspicious of irregularity and more reluctant to pay: it would almost certainly raise a prejudice in the minds of jury against the plaintiff, if upon a trial, the due presentment should be disputed. Moreover, by the noting, the presentment and dishonour of the bill may with ease, at any time, be traced by reference to the register or protest-book preserved in the notary's office, whilst another obvious advantage in noting, is that a copy can be at any time obtained from the notary's office, if the original should be lost."

The owner of a lost note must make as far as possible the same presentment and demand at the proper time and place, and give the same notice of dishonour for non-acceptance and non-payment with the same protest, and this by the aid of a copy, if practicable; though formerly, a protest upon a copy was not admissible whenever a new bill could be had of the drawer. (*a*)

It is to be observed, that noting and protest is not made compulsory, and is left to the option of the holder except in the case of foreign bills, (*b*) when such protest is required by the law of the place where they are drawn. Cheques are also excluded from this chapter, and in this respect, the Act follows the Statute of 9 & 10, Will. III, ch. 17; but now, under the Bills of Exchange Act, sections 51 and 73, the provisions relating to noting apply also to cheques. Though it may be said generally, that inland bills need not be noted, there are some special advantages resulting from such a course, apart from the general advantages already set forth, such as:—

Advantages of noting.

(1) Under section 104-A, whenever protest is required to be made within a specified time, it is sufficient if noting be made within that time, though protest may be drawn up later on.

(2) A bill of exchange may be accepted for honour after noting, though protest is not made. (*c*)

(3) A bill of exchange may be paid for honour after noting, and the person paying need not wait for protest. (*d*)

Noting should be made by the notary, within a reasonable time after dishonour. (*e*)

(*a*) Parsons, Vol. II, p. 26; see the notes to sec. 45 A.
(*b*) Sec. 104 *post*.
(*c*) Sec. 108 *post*.
(*d*) Sec. 113 *post*.
(*e*) See notes to sec. 105 *post*.

It has been already said that the noting should contain the reason for the holder treating the bill as dishonoured, if it has not been expressly dishonoured. This covers the class of cases where the holder has the right of treating the bill as dishonoured.

Mere noting on the bill, even if it discloses the name of the notary in full, is not evidence of the presentment or the dishonour of the bill; (*a*) but a protest would seem to be necessary, unless the notary public himself gives evidence in support of the noting he makes.

Protest.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

NOTES.

Advantages of protest.

The advantages of protest are much the same as noting, and its requisition in case of foreign bills is to afford "authentic and satisfactory evidence of dishonour to a foreign drawer or indorser who will be in difficulty in making inquiries of such dishonour, and will be compelled to rely on the representations of the holder." The usual course followed in protesting a bill, is given by Chitty (*b*) thus :—"In this country, the person who protests the bill should carry it to a

How made?

(*a*) *Bombay City Bank* v. *Moonjee Hurridoss*, Bourke (O. C.) 274 ; Cf. *Chesmer* v. *Noyes*, (1815) 4 Camp. 129.

(*b*) Chitty (11th Edn.) 341.

Sec. 100.

notary himself or by one of his clerks to present the bill again to the drawee, and demand payment during the usual hours of business at the place where it is made payable, and if the drawee refuses to pay, the notary thereon makes a minute in the first instance of the month, day and year, and the reason, if any, assigned for non-payment. The next step for the notary to take is to draw the protest, which is a formal declaration,—on production of the bill itself, if it can be obtained; otherwise, on a copy thereof,—that it has been presented for payment and how, that payment was refused and why, and that the holder intends to recover all damages and expenses which he or his principal or any other party to the bill may sustain on account of its non-payment. The usual practice is to enter a minute of the demand of payment, and of the dishonour of the bill, together with a copy of the same in the notarial register of the notary, and afterwards to draw up the formal protest, dating it of the day when the bill was presented for payment; and the instrument so drawn up is as much an original as if it has been drawn up at the time of presentment, and is equally admissible in evidence in our Courts." The same course has to be followed in case of dishonour by non-acceptance.

The minute so made is, as we have seen, noting the bill, and such noting will not in any case, supply the want of protest when it is required.

As to what the protest should contain, see section 101.

Protest for better security.

Besides protesting for non-acceptance and non-payment, protest may be made for demanding better security. When the acceptor of a bill of exchange has become insolvent or his credit has been impeached publicly before maturity or the acceptor absconds before that date, the holder may protest it in order to have better security for the amount due. The expenses of such a protest have been held not to be recoverable in England; *(a)* but that decision is not applicable to India. For that purpose, he employs a notary public to make the demand on the acceptor and, if refused, protest may be made and notice of it may be given to prior parties. Such protest can be made only by the holder, but the acceptor is not bound to give such security. The holder cannot compel the drawer or indorsers to give security, nor has he a right of immediate recourse against them after such protest, as he has to wait till the date of maturity. The holder is not bound to take this procedure, and his neglect to do so, does not discharge the parties liable on the instrument. The only advantage to be derived from such protest seems to be, that after it, the bill may be accepted

Its advantages.

(*a*) In re *English Bank of the River Plate,* (1893) 2 Ch. 438.

for honour, and it further enables the drawer and indorsers by being notified of the situation of the acceptor, to provide for the payment of the bill by other means, and thus save themselves from paying the loss of re-exchange, etc., by the return of the bill. With respect to foreign bills, it has the additional advantage that by the laws of various countries, the holder may after such protest, sue the parties to the bill and attach their property. The protest must be made within a reasonable time after the acceptor became insolvent, and what is reasonable time for such protest is not covered by section 105; but that section may well be applied to this case by way of analogy.

Where to be made?

This section does not point out the place where the protest is to be made, but under English law, it should be made at the place dishonoured, except in cases where the bill is returned dishonoured through post, in which case it is to be made at the place of return. (*a*)

Of the protest for better security, Brooke in his book on "Notary" (*b*) says: "As the ceremony is attended with little expense and furnishes so prompt and useful a remedy for the rocovery of the amount of the bill from any of the parties who may be residing in foreign countries, especially where the law of attachment prevails, a prudent holder of a bill of this kind will not omit to have the bill protested for better security," if the acceptor should in the words of the Act (*c*) "become bankrupt or insolvent or suspend payment." A notary, however, before drawing up a protest of this description should, for his own protection, make full enquiries, and should be satisfied that the acceptor has become a bankrupt or an insolvent or has suspended payment within the meaning of the Act. When the bill becomes due, if it is not paid, another protest must be made for non-payment.

When notary cannot be found.

Further, this section does not provide for cases where the services of a notary cannot be obtained at the place where the bill is dishonoured. Under the Bills of Exchange Act, in such a case, it is provided, that any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and such certificate operates as if it were a formal protest of the bill. (*d*)

(*a*) B. of Ex. Act, sec. 51 (6).
(*b*) Brooke's Notary (8th Edn.), 99.
(*c*) B. of Ex. Act, sec. 51 (5).
(*d*) B. of Ex. Act, sec. 94.

Sec. 101.

Contents of protest.

101. A protest under section 100 must contain—

(a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(b) the name of the person for whom and against whom the instrument has been protested;

(c) a statement that payment or acceptance or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(e) the subscription of the notary public making the protest;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

*A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.

---

* This paragraph was added by sec. 5 of the Negotiable Instruments Act II of 1885.

NOTES.

Sec. 101.

Contents of protest.

This section sets forth the elements of a regular and perfect protest :—

Instrument or transcript.

(a) The protest must contain either the instrument itself or a literal transcript of the instrument. In England too, a copy of the bill is necessary, (*a*) but in America, it is said that to copy the bill in the certificate is not necessary. For the purpose of identification and to prevent any question being raised as to the instrument being dishonoured and protested, the better rule is what is adopted in this section. This section, however, does not provide for cases where the bill is lost or destroyed or is wrongly detained from the person entitled to hold it; under the English law, in such a case, protest may be made on a copy or on a paper with written particulars of the instrument. (*b*)

Names of parties.

(b) The certificate of the notary must state the name of the party at whose request the protest is made, as also the name of the person upon whom demand for payment or acceptance was made. As to whether the name of the clerk or agent or other person in charge, on whom the demand is actually made in the absence of the drawee or the acceptor should be mentioned, Daniel says it is essential; but under the Act it is not necessary, though it is better for the holder to do so.

Reasons of dishonour, etc.

(c) Not only must the fact of demand of payment or acceptance or better security be mentioned in the protest, but it must also state the reasons given by the drawee for non-acceptance or by the acceptor for non-payment or for refusal to give better security. The certificate must state that demand was made by the notary public or his clerk, and should further contain that the person refused to accept or pay it or that he answered that it would not be accepted or paid. If the person gave no answer to the demand, or if he was not to be found at his usual place of business or residence, that fact must be stated. Further, the demand being a material part of the proceedings, it should be made by the notary himself to whom credit is given as a public officer, or by one of his clerks; and the fact that the demand was duly made by the notary or his clerk must appear clearly from the protest itself. In England, where the holder can acquiesce in a partial acceptance and protest as to the rest, the protest must contain that fact, and must not state merely a general refusal to accept;

(*a*) B. of Ex. Act, sec. 51 (7). (*b*) See B. of Ex. Act, sec. 51 (8).

Sec. 101.

otherwise, the holder cannot avail himself of the qualified acceptance. (*a*)

Time of demand and dishonour.

(d) It is essential that the time of demand and dishonour should also be stated in the notarial certificate, for otherwise, it cannot be stated from the protest whether the bill was duly dishonoured. This is necessary especially as the formal protest itself may be extended at any time thereafter as of the date of the noting. So, if the protest merely states that the bill was presented and dishonoured and is dated on a day subsequent to maturity, it is invalid on the face of it. Again, the place of dishonour is important in ascertaining whether there has been dishonour in law. If the bill were payable at a specified place and not elsewhere, the certificate will be defective, unless it states presentment and demand at that place. In other cases also, question will certainly arise whether the demand was made at the proper place or not, and a statement as to where the demand and dishonour took place is necessary. The same considerations apply, where demand for better security is made and refused.

Signature and seal.

(e) That the signature of the notary is essential to the validity of a certificate by him is obvious. Clause (e) makes no mention of the use of the seal by the notary, but in practice the seal is always affixed to the protest. Even in England, under the Bills of Exchange Act, the seal is not necessary, and Chalmers says that the words requiring a protest to be under seal, were struck out in Committee. As the absence of a seal in a protest may give rise to difficulties in the way of its being received in evidence by the foreign Courts, it is more prudent for the holder to insist on the seal also being affixed. In this connection, it is perhaps well to mention, that the form of protest should conform to the law of the country where it is made; so, in an action on a bill drawn in England and accepted by a French house, it was held that it was sufficient if it was proved that such note of dishonour and protest as was required by the law of France was given, even though the parties between whom this was decided (*i.e.*. the indorsee and payee) were domiciled in England. (*b*)

Acceptance for honour, etc.

(f) After the amendments of sections 108 and 109, allowing acceptance for honour and payment for honour to be made without the intervention of the notary, clause (f) is out of place in the

---

(*a*) See *Bentinck* v. *Dorrien*, (1805) 6 East. 199; *Sproat* v. *Matthews*, (1786) 1 T. R. 182.

(*b*) *Rouquette* v. *Overmann*, (1875) L. R. 10. Q. B. 525; *Rothschild* v. *Currie*, (1841) 1 Q. B. 43; see *Hirschfeld* v. *Smith*, (1866) L. R. 1 C. P. 340; *Horne* v. *Rouquette*, (1878) 3 Q. B. D. 514; *Trimbey* v. *Vignier*, (1834) 1 Bing. N. C. 151; Cf. *Allen* v. *Kemble*, (1848) 6 Moo. P. C. C. 314.

Act. The effect of its retention in the present section will be considered under the above two sections.

Demand by notary, etc.

The last clause was added by the Act II of 1885, allowing demand to be made by a notary through his clerk or by a registered letter, if authorised by usage or agreement. In England, it has always been the usual practice for the notarial presentment to the drawee or acceptor to be made by the notary's clerk, though in the present Bills of Exchange Act, there is no specific provision allowing such a course. The present section goes further than the English practice, and allows a demand to be made by a registered letter, if authorised by agreement or usage.

The above are the necessary contents of a protest, and the omission of one or more of them will render the protest invalid. But, mere trivial mistakes, such as, a mistake in the Christian name of the parties, or an incorrect date of the bill wrongly inserted, if it does not mislead the party entitled to notice, will not operate to render the protest wholly invalid.

Stamp for protest.

Besides the above requisites, a protest to be valid must be drawn up on a paper of the stamp value of Rupee one, under Art. 50 of Schedule I of the Indian Stamp Act (II of 1899); (or in the Madras Presidency, on a paper of the stamp value of Rupees two, under Art. 41 of Schedule I-A of the Stamp Act, as amended by the Madras Stamp (Amendment) Act VI of 1922.)

Notice of protest.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

NOTES.

When notice of protest given.

What the section provides is that in cases where notes and bills are required to be protested, notice of protest must be given instead of notice of dishonour. So, in the case of a foreign bill of exchange, all the parties liable on such bill whom the holder wants to proceed against, are entitled to insist on notice of protest being given to them.' In England, however, it has been held that notice of protest is not necessary, if the drawer resides within the country, (*a*) nor if at the

(*a*) *Cromwell* v. *Hynson*, (1796) 2 Esp. 511.

Sec. 102.

time of dishonour, he has returned home to England. (*a*) It has also been decided that the holder of a foreign bill of exchange, dishonoured and protested, need give no more information than that "the bill had been duly presented for payment and returned dishonoured," and he need not mention anything about protest. (*b*) All these cases will not, it is submitted, apply to India, and notice of the protest will be necessary, to fix the liability of the parties on a bill of exchange which requires to be protested. Whether a copy of the protest itself should be sent to the party, is not clear from the section. In England, it is settled, though there was some doubt about it before, that in giving notice of dishonour to the drawer of a foreign bill resident abroad, it is sufficient to inform him that the bill had been protested, without actually sending him a copy of the protest. (*c*)

When notice of protest excused.

The rules as to giving the notice of protest are the same as those applying to the notice of dishonour. So, protest may be waived in the same way as dishonour, either by expressly dispensing with it or by a subsequent promise to pay the amount of the money due under the instrument. (*d*) Thus, an express promise of payment after the bill was due, is sufficient evidence of a protest for non-payment and notice thereof, for Lord Ellenborough says: "By the promise to pay, he admits his liability; he admits the existence of every thing which is necessary to render him liable. When called upon for payment of the bill, he ought to have objected, that there was no protest. Instead of that, he promises to pay it. I must, therefore, presume that he had due notice, and that a protest was regularly drawn up by a notary." (*e*) So also, the protest of a foreign bill of exchange is excused, when there are no funds of the drawers in the hands of the drawee, or the party the holder wants to charge could suffer no damage for want of such notice. Again, delay in giving notice of protest will be excused, if it was caused by circumstances beyond the control of the party giving notice and not imputable to his neglect, default or misconduct. But, he must give notice with reasonable diligence, as soon as the reasons for such delay cease to operate.

It is not clear whether there is any excuse in favour of a holder in due course when a prior holder has failed to protest, on account of dishonour by non-acceptance. But, as the section applies the rules relating to dishonour to protest, it is submitted that such an excuse exists in favour of a subsequent holder in due course.

(*a*) *Robins* v. *Gibson*, (1813) 1 M. & S. 288.

(*b*) Ex parte *Lowenthal*, Re *Lowenthal*, (1874) L. R. 9 Ch. App. 591, 593.

(*c*) *Goodman* v. *Harvey*, (1836) 4 A & E. 870.

(*d*) *Cf.* B. Ex. Act, sec. 51 (9).

(*e*) *Gibbon* v. *Coggon*, (1809) 2 Camp. 188.

Again, notice of protest may be given either by the holder or by the notary who makes the protest. There is no such provision in English law.

Protest for non-payment after dishonour by non-acceptance.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

NOTES.

The section is based on the repealed Statute of 2 & 3 Will. IV, ch. 98, section 4 of 1860. According to English law, protest must be made at the place of dishonour. Where the drawee of a bill resides in one place, and the bill is drawn payable at another place, it will be sufficient to present the bill for acceptance to the drawee at the place where he resides, and if acceptance is refused, it may be protested there. (*a*) Thus, where a bill drawn in Liverpool, and payable in London was protested for non-acceptance and non-payment in Liverpool, it was held that 'a general refusal to pay, was a refusal to pay according to the face of the bill. It was equivalent to a refusal to pay in London'. The bill being payable at London, it would have been sufficient for the holder to have been there when the bill fell due, ready to receive payment. In the present case, a protest at London or a demand and protest at Liverpool was sufficient, and the holder might take either course. (*b*) The Statute above referred to, came to be passed, because of the doubts supposed to have been cast by the case of *Mitchell* v. *Baring*, (*c*) upon the previous practice in England to make presentment and protest of a bill in the place of payment, though presentment and protest at the place of residence of the drawee would have been sufficient.

The section lays down that a bill payable at a place different from that of the residence of the drawee, if dishonoured by non-acceptance, need not be presented again for payment,

(*a*) Cf. *Mitchell* v. *Baring*, (1829) 10 B. & C. 4, 6, 7.

(*b*) *Mason* v. *Franklin*, 3 Johns, 202 (Amer.); Daniel. sec. 651.

(*c*) (1829) 10 B. & C. 4.

Sec. 104. and demand need not be made again by the holder. The holder can protest for non-payment at the place specified for payment, unless the bill is paid before or at maturity. The only distinction that now exists between the English and the Indian law is, that under the Indian law, protesting at the place specified for payment is left to the option of the holder, while in England, protest must be made at the place where the bill is expressed to be payable. (*a*)

Protest of foreign bills.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

NOTES.

Foreign bills.

Foreign bills of exchange are:—(1) bills drawn outside British India and made payable in, or drawn upon any person resident in any country outside British India, (2) bills drawn outside British India and made payable in British India or drawn upon any resident therein, and (3) bills drawn in British India and made payable outside British India, or drawn upon any resident outside British India, but not made payable in British India. It is only foreign bills that require to be protested under the Indian Law, and they too need not be protested when the law of the place where they are drawn, does not require a protest. Therein, the Indian Legislature adopts the principle of *lex loci contractus*, though the formalities of the protest ought to be governed by the law of the place where it is made.

To be protested.

The reason of the rule requiring the dishonour of foreign bills to be attested by a protest is, that by the law of most of the foreign countries, a protest is made essential in case of dishonour of any bill, and so, for the sake of uniformity in international transactions, a foreign bill is required to be protested. Moreover, such a protest "affords authentic and satisfactory evidence of dishonour to the drawer, who, from his residence abroad, might experience a difficulty in making proper inquiries on the subject, and be compelled to rely on the representations of the holder. It also furnishes an indorsee with the best evidence to charge an antecedent party abroad; for foreign Courts give credit to the acts of such a public functionary as a notary, in the same manner as a protest under the seal of a foreign notary is evidence, in our Courts, of the dishonour of a bill payable abroad." (*b*) Speaking of foreign bills, Lord Ellenborough said that "the use and convenience, and indeed

(*a*) B. of Ex. Act, sec. 51 (6) (b).
(*b*) Byles (19th Edn.) 241; *Hutcheon* v. *Mannington*, (1802) 6 Ves. 823.

the necessity of protest on foreign bills of exchange, in order to prove in many cases the regularity of the proceedings thereupon, is too obvious to warrant us in dispensing with such an instrument in any case where custom of merchants, as reported in the authorities of law appears to have required it." (*a*) So necessary is protest in the case of foreign bills, that no evidence of dishonour but that of protest will be allowed by the Courts. The holder is not entitled to prove dishonour, either by witnesses or otherwise, for the contract for protest is a part of the constitution of foreign bills. (*b*)

The section applies only to foreign bills of exchange ; and foreign promissory notes need not be protested for dishonour by non-payment.

When noting equivalent to protest.

* **104-A.** For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

NOTES.

This section was newly added by Act II of 1885, and follows in effect the provisions of section 93 of the Bills of Exchange Act. (*c*) It is essential that noting must have taken place within the time allowed by law, though formal protest may be drawn up later on. (*d*) Thus, if a bill was regularly presented and noted at the time, the protest may be made at any future period, and in fact at any time before the date of suit. Noting is but the incipient protest, and by requiring the noting to be done within the time allowed, the protest has begun within the specified time, though it may take time for completion. Why noting

(*a*) *Hoare* v. *Cazenove*, (1812) 16 East. 391.

(*b*) Cf. *Borough* v. *Perkins*, (1703) 1 Salk. 131.

* This section was inserted by sec. 6 of the Negotiable Instruments Act (II of 1885).

(*c*) See also B. of Ex. Act, sec. 51 (4).

(*d*) *Geralopulo* v. *Wieler*, (1851) 10 C. B. 690: 20 L. J. C. P. 105 ; *Chaters* v. *Bell*, (1801) 4 Esp. 48.

Sec. 104-A. alone should be insisted upon being made at the time, is that the notary will not be permitted to trust his memory for the requisite particulars, and the law will give credit only to his contemporaneous written statement. The protest being but an amplification of the noting, the law allows it to be made at the notary's leisure. Whenever protest is drawn up, it relates back to the date of noting.

CHAPTER X.

OF REASONABLE TIME.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and in calculating such time, public holidays shall be excluded.

Reasonable time.

NOTES.

Reasonable time.

It is difficult to draw the line as to reasonable or unreasonable time. (*a*) "The question of reasonable time is a riddle which is difficult to solve," and it depends "upon so many circumstances to determine what is reasonable time in a particular case, that one decision goes but a little way in establishing a precedent for another." (*b*) What is reasonable time has been held by the Madras High Court to be a question purely of fact and not of law (*c*); but the better view seems to be that given by Daniel as the rule followed in America, that it is a mixed question of law and fact. (*d*) This view not only is in accordance with the decided cases in England, but also follows the opinion of the text-writers on the subject. The rule is stated by Chitty thus—"The Jury are to find the facts, such as, the distance at which persons live from each other, the course of post, and all other circumstances applicable to the case. But, when these facts have been ascertained, the reasonableness of the time becomes a question of law, which is to be determined by the Court and not by the Jury." (*e*)

Depends on what?

In determining what is reasonable time, the section says that the nature of the instrument and the usual course of dealing with respect to similar instruments, shall be taken into consideration. To these circumstances may be added, the course of dealing between the parties,

(*a*) *Hopkins* v. *Ware*, (1869) L. R. 4 Ex. 268, 272, per Channell. B.

(*b*) Daniel, sec. 604.

(*c*) *D'Sena* v. *T. M. Nair* 31 Mad. 364; *Appleton* v. *Sweetapple*, (1783) 3 Doug, (K. B.) 137.

(*d*) Daniel, sec. 612.

(*e*) Chitty (11th Edn.) 323; *Katsai* v. *Daulat Ram*, 1 Lah. L. J. 158; *Bahadur Chand* v. *GhulabRai*, 11 Lah. 34.

Sec. 105.

or any express agreement between them fixing the reasonableness of time, the distance between the parties and the nature of the communication between them. Thus, where a hundi payable at sight was drawn on the 19th of March in Lyallpur District, upon a firm in Karachi, was put into circulation on the 2nd of April, it was held that considering all the circumstances mentioned above, the period of 11 days taken for presentment (deducting two days for public holidays) could not be treated as unreasonable. (*a*)

Time for presentment for acceptance.

As to what is reasonable time within which instruments should be presented for acceptance, has been already dealt with under section 61 and needs no further mention here. As to the reasonable time within which a negotiable instrument ought to be presented for payment, it varies with the class under which the instrument falls; and the consequences of a failure to make due presentment are not precisely the same in every class. Thus, promissory notes payable on demand are not on the same footing as bills payable on demand; nor do cheques fall within the law applicable to bills payable on demand. Hence, it is necessary that each of these classes of instruments should be separately treated. In the case of cheques, section 73 provides that they are to be presented for payment, in order to charge any person except the drawer, within a reasonable time after delivery by such person. The English cases decided before the passing of the Bills of Exchange Act may be useful in deciding the question of reasonable time in presenting cheques. Though Chalmers is of opinion that section 74 (1) of the Bills of Exchange Act, which is similar in terms to the present section introduces a new and less rigorous measure of reasonable time than the Common Law rule, still the decisions before the Act may with advantage be looked to for guidance in deciding the question of reasonable time. "The rule to be adopted must be a rule of convenience; and it seems to be convenient and reasonable that cheques received in the course of one day should be presented the next day." (*b*) If any other rule were adopted, it would be difficult, if not impossible, to draw the line. "It is always to be considered, whether under the circumstances of the case, the cheque has been presented with reasonable diligence. This is what the law merchant requires. The rule that the moment a cheque is received by the post, it should invariably be sent out for payment, would be most inconvenient and unreasonable."(*c*) This observation of Lord Ellenborough has been universally followed in later

For payment of cheques.

(*a*) *Bahadur Chand* v. *Ghulab Rai*, 11 Lah. 34.

(*b*) Per Lord Ellenborough, in *Rickford* v. *Ridge*, (1810) 2 Camp. 537.

(*c*) *Ibid.*

Sec. 105.

cases by the Courts in England, (*a*) and it is well settled according to those cases that if the payee or other holder of the cheque receives it immediately from the drawer, in the same town or city where it is payable, he is bound to present it for payment to the bankers, on the next following day after it is received, before the close of the usual banking hours. (*b*) This does not, however, prevent the holder from presenting the cheque on the same day on which it is drawn or delivered to him if he so chooses to do; and in that case, the drawer cannot complain of the extraordinary diligence on the part of the transferee. But, the holder is at liberty to wait till the next succeeding day. If, however, a cheque is delivered at a place different from the place where it is made payable, it will suffice to forward it by post or through a messenger, to some person at the latter place on the next day after it is received, and the agent to whom it is forwarded need not present the cheque on the same day on which it is received by him, but it will suffice for him to present it in the course of the next day. In the calculation of reasonable time, it is to be noticed, that public holidays are to be excluded. When the holder receives the cheque not immediately from the drawer, but it is negotiated to him by indorsement or delivery by the payee or other party on the instrument, the same rule applies between the immediate parties to the transfer as applies between the drawer and the original payee; that is to say, if payable in the same town or city where the transfer is made, it must be presented before the close of the banking hours on the next succeeding working day; but if payable at a place different from where it is received, it must be forwarded by post to the banker or to some person there, for payment. Thus, each party is allowed a day as between himself and his immediate transferor for making the presentment or for forwarding the cheque. This does not, however, authorize the keeping away of the cheque from presentment by circulation, so as to retain the liability of all the prior parties to it. Each party on the cheque is liable to every subsequent holder, only if the presentment is made and notice of dishonour is given within the time for which he would be liable, if it had been presented by the party immediately claiming from him. This strict rule is not applicable, however, to bills of exchange; and the reason of the strictness as to cheques is that a cheque being an instrument not in general intended by the drawer to be long in circulation, the holder must present it as soon as he reasonably may, and if he keeps it longer than that, he does so at his own risk. More-

(*a*) *Moule* v. *Brown*, (1838) 4 Bing. N. C. 266; *Alexander* v. *Burchfield*, (1842) 7 M. & Gr. 1061; *Firth* v. *Brooks*, (1861) 4 L. T. N. S. 467; see *Boddington* v. *Schlencker*, (1833) 4 B. & Ad. 752.

(*b*) *Hare* v. *Henty*, (1861) 30 L. J. C. P. 302; *Prideaux* v. *Criddle*, (1869) L. R. 4 Q. B. 455; *Heywood* v. *Pickering*, (1874) L. R. 9 Q. B. 428.

Sec. 105.

over, the consequence of non-presentment of a cheque within reasonable time is not so serious in the case of the drawer as in other cases. The indorsers and the payee are absolutely discharged by *laches* on the part of the holder, but the drawer is in no case discharged from his responsibility, unless he has suffered some loss or injury by the omission or neglect of the holder, and even then only to the extent of such loss or injury. (*a*)

Time for presentment, for payment of bills and notes on demand.

The question of reasonable time may again arise with regard to presentment for payment of bills of exchange and promissory notes payable on demand. In England, there is a distinction drawn between bills of exchange payable on demand, and promissory notes payable on demand. The latter are generally not intended for immediate payment, and are treated as continuing securities, while bills are not so treated. Consequently, perhaps, a more literal construction will be given to 'reasonable time' in case of promissory notes, than in case of bills. (*b*) There is nothing in the Act to show that such distinction is recognised in India; but it is, however, to be noticed that this section says that the nature of the instrument should be taken into consideration, (*c*) in calculating reasonable time, and this provision may perhaps afford some ground for the inference that the Indian Legislature had in view the distinction above pointed out. (*d*) Under English law, a bill payable on demand ought to be presented, if the parties live in the same place, the next day after the payee has received it. If the bill be sent by post for presentment, it ought to be presented on the day next after the day on which it was received, and then the person who receives it by post should present it on the day next after that on which he receives the bill. (*e*)

In England, the rule now is that when a bill is noted or protested, it must be noted on the day of its dishonour, though the formal protest may be drawn up later on. (*f*) Before the passing of the Bills of Exchange Act, the law on the point was doubtful. The adoption of such a strict rule in India will work great hardship on the holders, especially, as in the mofussil places, notaries are not easily to be had, and as there is no provision in the Act corresponding to section 94 of the Bills of Exchange Act, enabling the holder in case the services of a notary cannot be obtained, to resort to a householder or a substantial resident of the locality for a certificate of dishonour.

(*a*) See sec. 84 *ante*.

(*b*) *Cf.* notes to sec. 59, *ante* page 270.

(*c*) *Bahadur Chand* v. *Ghulab Rai*, 11 Lah. 34.

(*d*) See *Jagannadha Reddiar* v. *Lakshmanan*, 47 M. L. J. 475.

(*e*) Chitty (11th Edn.) 247; Daniel, sec. 605.

(*f*) B. of Ex. Act, sec. 51 (4).

As to when a notice of dishonour should be given, see the next two sections.

Reasonable time of giving notice of dishonour.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

NOTES.

Time to give notice of dishonour.

This section only enacts the rule adopted by the Judges in England, a rule though artificial, yet definite in its nature, and conducive to the general convenience of commercial people. This definite rule for determining reasonable time is laid down only in connection with giving of the notice of dishonour, and the Act does not attempt to lay down an absolute rule in other cases. In this respect, the section differs from the corresponding provision of the English Act which seems to lay down an exclusive rule, though it is limited in its operation to cases where special circumstances are absent. (*a*)

The first paragraph of the section applies to a case where the holder and the party to whom notice is given carry on business, or live in different places, while the second paragraph is applicable when they carry on business or live in the same place. If both of them live in the same place but carry on business in different places, or *vice versa*, it is the second paragraph that is applicable and not the first. The rule originally adopted in England was that notice should be sent by the post next after the holder or any other party who was bound to give notice, had himself received notice of the dishonour. (*b*) At least this rule was applied whenever a reasonable time remained, to prepare

(*a*) B. of Ex. Act. sec. 49 (12).

(*b*) *Tindal* v. *Brown*, (1786) 1 T. R. 167; see *Chapman* v. *Keane*, (1835) 3 A. & E. 193, 197; *Darbishire* v. *Parker*, (1805) 6 East. 3, 8.

Sec. 106. and send the notice between the time of dishonour and that of going out of the post on the day.

This rule requiring notice to be sent by the next post was thought inconvenient and harsh, and hence in later cases it was held that it was not necessary for the holder to send the notice by the post on the day of dishonour or of the knowledge of dishonour, but that the holder or other party is entitled to the whole of that day to prepare the notice in, and that it is sufficient if the notice is put into the post on the succeeding day. Even if there are two posts on the next day, notice by either of them is good, for the fractions of a day are not counted. This change of the rule is referred to by Lord Ellenborough thus: "It has been laid down, I believe, since the case of *Darbishire* v. *Parker* (*a*) as a rule of practice, that each party into whose hands a dishonoured bill may pass, should be allowed one entire day for the purpose of giving notice; a different rule would subject every party to the inconvenience of giving an account of all his other engagements, in order to prove, that he could not reasonably be expected to send notice by the same day's post." (*b*) Even this rule was found to be harsh, when the post of the day next after dishonour left very early in the morning, and so it has been held sufficient if the holder posted the letter in the coure of the day. Now, the rule in England according to the case-law, as well as according to the Bills of Exchange Act, is that the notice should be sent off on the day following the dishonour, if there be a post at a convenient hour on that day; and if there be no such post on that day, then by the next post thereafter. (*c*) Though the Indian Legislature attempts to lay down the rule to be found in England, it is submitted, that the rule as laid down is narrower. It is not clear whether the words 'next post' refer to the post on the day of dishonour, if there be one that day, If it refers to the post on the same day, and then if there be no post going out on the next day, the party giving notice should put the notice in the post-office on the next day, and he cannot wait till the next post day, though such a course is open to the holder in England. Again, the word 'despatch' is ambiguous. It is not clear whether it means merely putting the letter into the post-office or sending it off by post. If the words 'next post' are to be understood as the next post available after the day of dishonour, then the section would seem to be on a par with the section in the Bills of Exchange Act. Even then, if there be a post on the next day, but at

Section criticised.

(*a*) (1805) 6 East. 3.

(*b*) *Bray* v. *Hadwen*, (1816) 5 M. & S. 68; *Williams* v. *Smith*, (1819) 2 B. & Ald. 496, 500.

(*c*) B. of Ex. Act, sec. 49 (12) (b); *Williams* v. *Smith*, (1819) 2 B. & Ald. 496; *Hawkes* v. *Salter*, (1828) 4 Bing. 715.

an inconvenient hour, and there be no other post going out that day, is the holder bound to send the notice by that post or should he post it into the post-office the next day, though the post does not go out? According to the section, it seems to be necessary that notice must be put into the post-office on the next day, though under the English law the holder may post the letter intimating dishonour in time for such post. (*a*) Again, it seems, that the requirements of the section will be satisfied, if the letter is put into the post-office, even though later than the hour of post that day. If that is so, the section would be at variance with the rule in England.

When parties in the same place.

If the parties carry on business or live in the same place, it is sufficient if the notice is sent off so as to reach its destination on the day next after dishonour. For, the holder is not bound to exercise any diligence more strict, because that would be to compel him to devote himself to the giving of notices of dishonour neglecting all his other business. (*b*) The word 'place' is extremely loose, vague and untechnical, and its exact meaning has not been judicially noticed. (*c*) Chitty lays down the rule with his characteristic lucidity of expression thus: "In all these cases, it suffices to cause notice to be received on the next day by the preceding indorser, when resident in or near the same place. The reason why it has been decided that in no case it shall be necessary to give notice of dishonour on the day of dishonour is to prevent nice and difficult inquiries whether or not in this or in that particular case, the holder could have given conveniently, notice on the same day. Whether the pressure of other business did not prevent him from so doing, the affirmative or negative of which might be in the knowledge only of the holder himself, might become a very critical inquiry and be very difficult and uncertain in legal proof. Another reason is that the holder ought not to be required *omissis omnibus aliis negotiis* to occupy himself immediately in forwarding notice to the prior parties, when by delaying that step till the next morning, he would after the press of other business had subsided in the evening or early in the next morning before his general business commences, have time to look into his accounts with the other parties and to consider what best steps might be taken to obtain payment from them."

Notice of dishonour should be given as soon as the bill is dishonoured. (*d*) Though the holder can give notice the next day after

(*a*) Cf. *Hawkes* v. *Salter*, (1828) 4 Bing. 715.

(*b*) *Smith* v. *Mullett*, (1809) 2 Camp. 208; *Hilton* v. *Fairclough*, (1811) 2 Camp. 633; Cf. *Rowe* v. *Tipper*, (1853) 22 L.J.C.P. 135.

(*c*) See however, *Casey* v. *Rose*, (1900) 82 L.T. 616.

(*d*) *Bahadur Chand* v. *Ghulab Rai*, 11 Lah. 34.

Sec. 107.

dishonour, the other party cannot complain, in case notice is given the very day of dishonour, of the extraordinary diligence used, to give him the information. (*a*)

Notice in case of hundis.

With reference to hundis, before the passing of the Act it was held that what the Hindu law or the Law Merchant in India required was not immediate notice of dishonour, but only a reasonable one. The rule laid down in the section in the absence of a custom or local usage to the contrary may be applied to such instruments also as being founded on convenience, apart from its applicability by reason of section 1. (*b*) A delay of ten months in sending a notice has been held not to be within reasonable time. (*c*) So also a delay of 27 days. (*d*)

In calculating reasonable time, public holidays are excluded. (*e*)

The rule laid down in the section depends on other circumstances also, such as, the facility of communication ; it is evident in the case of notice requiring to be sent abroad, some days might elapse before a mail steamer sailed. The resonable time depends also on the knowledge of the party giving notice of the address of the party to whom it is given ; the holder is bound to exercise due diligence to find out the address of the party, and the time taken by him for such inquiries should not be imputed to his *laches*. (*f*)

Reasonable time for transmitting such notice.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

NOTES.

Notice by other parties.

The rules laid down in section 106 are applied by this section to the party receiving notice of dishonour, when he seeks to enforce his rights against a prior party by sending notice of dishonour. (*g*)

(*a*) *Burbridge* v. *Manners*, (1812) 3 Camp. 193 ; *Hine* v. *Alley*, (1833) 4 B. & Ad. 624 ; *Kennedy* v. *Thomas*, (1894) 2 Q.B. 759.

(*b*) *Anunt Ram Agurwalla* v. *R. D. Nuthall*, 21 W. R. 62.

(*c*) *Huree Mohun Bysack* v. *Krishno Mohun Bysack*, 17 W. R. 442.

(*d*) *Bahadur Chand* v. *Ghulab Rai*, 11 Lah. 34.

(*e*) *Hawkes* v. *Salter*, (1828) 4 Bing. 715 ; *Wright* v. *Shawcross*, (1819) 2 B. & Ald. 501 (notes).

(*f*) *Gladwell* v. *Turner*, (1870) L. R. 5 Ex. 59, 61 ; *The Elmville*, (1904) P. 319.

(*g*) *Rowe* v. *Tipper*, (1853) 13 C. B. 249.

Sec. 107.

One day for each party.

Thus, one clear day is to be allowed for each step in the communication between parties who are liable on the bill. Where a bill passed through the hands of five persons, all of whom lived in London or in its neighbourhood, and the bill when due, being dishonoured, the holder gave notice on the same day to the fifth indorser, and he on the next day to the fourth, and so on in succession to the first, it was held that due diligence had been used. (*a*) This does not, however, extend the time within which the holder is to give notice to the first indorser if he so wants to; he is not entitled to as many days as there are indorsers to give notice of dishonour in, but must give it within the same time as he would have, if he had resorted at first to his own immediate indorser. (*b*)

(*a*) *Hilton* v *Shepherd*, (1796) 6 East, 13 (n).

(*b*) *Goodall* v. *Polhill*, (1845) 14 L.J. C.P. 146; *Dobree* v. *Eastwood*, (1827) 3 C. & P. 250; *Marsh* v. *Maxwell*, (1809) 2 Camp. 210 (note); *Rowe* v. *Tipper*, (1853) 22 L. J. C. P. 135; *Jagannath Nathu Mal* v. *Ram Das Brij Das*, 25 I. C. 881.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Acceptance for honour.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto. * * * *

NOTES.

Acceptance for honour.

As soon as a bill is dishonoured by non-acceptance, there is a right of recourse against the drawer and the other parties to the bill; to prevent the operation of this right, the law allows under the circumstances, a stranger to intervene and accept the bill in the place of the defaulting drawee, the object being to save the credit or honour of some party to the bill or of the person for whose account it is drawn, especially if such party lives far away from the place of dishonour by non-acceptance. There are very few instances reported in law books of recent years on this practice. In fact, the changed modern conditions of commerce, facility of easy communications by telegram has rendered this practice almost a dead letter. Such an acceptance is called an acceptance for honour, and can take place only after the bill has been noted or protested for non-acceptance. Originally, the intervention of the notary was necessary, but the section has been amended by Act II of 1885, and the amendment did away with the necessity of the intervention of the notary in case of notice of dishonour. The portion repealed by Act II of 1885 was as follows:—" Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity." By this amendment, the law as to acceptance for honour has been brought into conformity with the law in England

* Repealed by sec. 7 of the Negotiable Instruments Act II of 1885.

Sec. 108.

under the Bills of Exchange Act. (*a*) It was the practice under the English law before the Bills of Exchange Act and necessary under the Indian Law before the amendment of 1885, for an acceptance for dishonour to be attested by a notary by what is called an "act of honour" regarding the transaction, which is generally a certificate signed by a notary which declares that a third person will accept the bill which has been protested for non-acceptance or for better security, for the honour and upon the account of some party to the bill or of the party on whose account the bill is drawn. (*b*) This peculiar kind of acceptance for honour which is as stated above allowed when the original drawer refuses to accept the bill, is also allowed when the acceptor is required under the conditions mentioned in section 100, to give better security and refuses to do so. It is essential that such acceptance should not be given until after a regular noting or protest of the bill for non-acceptance or for want of better security, has been drawn up. A promise to pay a bill after a refusal to accept, but before noting or protest, is not considered an acceptance for honour; for, the drawer and other persons on the bill may well say that the person accepting for honour is not the original drawee, and as noting or protest is necessary to establish the refusal by the original drawee to accept, that being by the Law Merchant a strong proof of such refusal, they should not be bound without such a proof.

What is?

The object of such an acceptance is very often to save the credit of all or some of the parties to the instrument, to prevent legal proceedings being taken against them on dishonour by the drawee, and to exempt them from damages as in cases of exchange and re-exchange.

Its object.

A bill cannot be accepted for honour or *supra-protest* by a person whose liability on the bill is already fixed. Only a stranger, a third person not liable on the bill, can undertake such acceptance. (*c*) Even the drawee, though he may not choose to accept the bill, may accept it for the honour of any party on the bill, for by his refusal he is a stranger to the bill and is not liable thereon. Even if he is bound to accept the bill either by a binding agreement with the party on whose account or behalf it is drawn or by the fact of his having been provided with funds for acceptance, under the Act there is nothing to prevent him from becoming an acceptor for honour, though to allow him thus to change his relations to the parties, will be open to serious practical inconveniences. Under the English law, when a bill has been accepted *supra-protest* for the honour of one party, it is said that it

Who can accept for honour?

(*a*) B. of Ex. Act, sec. 65 (1).
(*b*) Brooke's Notary (8th Edn.) 89, 90.
(*c*) B. of Ex. Act, sec. 65 (1).

Sec. 109.

may, by another individual, be accepted for the honour of another and thus there may be a series of such acceptances for honour; (*a*) but Chalmers says that this rule is now obsolete, and the only case when such acceptance may now be allowed is where the acceptor for honour fails before the maturity of the bill, when a second acceptance for honour is sometimes obtained. (*b*) A bill cannot be accepted for honour when it is overdue. (*c*)

Is holder bound to take such acceptance?

In no case is the holder of a bill bound to take an acceptance for honour, and such acceptance cannot take place except with his consent. The reason of such a rule is obvious. By the dishonour of the bill by the drawee, there is at once a right of recourse for the holder against all parties whose names appear on the bill. This immediate right of recourse against these parties he waives, by taking an acceptance *supra-protest*, and unless the acceptor for honour is such a substantial person that the holder can safely rely on his credit, he may be prejudiced by waiting to enforce his right till after maturity of the instrument, for example, by the subsequent insolvency of the drawer or any other indorser.

Not applied to promissory notes.

It may not be superfluous to state that this rule of commercial law is not applicable to promissory notes. (*d*) If, therefore, a person not a party to the note, promises, upon dishonour to pay it for the honour of the maker or some other party, he does so at his own risk, and does not by the Law Merchant acquire any right against that party or any other parties for reimbursement. The reason is probably, that promissory notes are not drawn payable in a foreign country, and there is no necessity for the intervention of a third party to save the credit of one or more of the parties, and hence the custom of the Law Merchant never extended this rule to promissory notes.

Partial acceptance.

Under English law, there can be an acceptance *supra-protest* for part only of the sum for which the bill is drawn; (*e*) but under the Indian law such a course is not allowed.

How acceptance for honour must be made.

109. A person desiring to accept for honour must,* by writing on the bill under his hand declare that he accepts under protest the protested

(*a*) *Jackson* v. *Hudson*, (1810) 2 Camp. 447.

(*b*) Chalmers (10th Edn.) 266; see however, Halsbury's Laws of England, Vol. II, p. 694; Story on 'Bills' (6th Edn.) 122.

(*c*) B. of Ex. Act, sec. 65 (1).

(*d*) But see Chalmers (10th Edn.) 271.

(*e*) B. of Ex. Act, sec. 65 (2).

* The words "by writing on the bill under his hand" were substituted for the words "in the presence of a notary public subscribe the bill with his own hand and" by sec. 8 of the Negotiable Instruments Act II of 1885.

bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour. * * * * * * * **Sec. 109.**

NOTES.

This section is the result of an amendment by Act II of 1885 which did away with the necessity of the acceptor for honour presenting himself before a notary to effectuate his intention. The mode of accepting for honour before the amendment was as follows:—The acceptor must personally appear before a notary, and in his presence subscribe the bill with his own hand and declare that he accepts the protested bill for the honour of the drawer or of a particular indorser whom he names or generally for honour. Such declaration must be recorded by the notary in his register. **How accepted for honour?**

Now, all that is required by the section for such acceptance to be valid is :—

(a) that it should be written by such acceptor on the bill under his hand ; and

(b) that such writing should declare that he accepts the protested bill for the honour of the drawer or of a particular person whom he names, or generally for honour.

It is not now necessary for him to make the declaration before a notary and have it recorded in the notarial register, nor is it required that it should be signed by the acceptor. But, the English law requires the signature as an essential to the validity of an acceptance *supra-protest.* (*a*)

As to the above proposition, there is however one element of doubt which has already been pointed under section 101, cl. (b). That clause requires that a protest *must* contain as one of its elements, in the event of an acceptance for honour, the name of the person for whom, and the manner in which such acceptance was offered and effected. It would seem at first sight, that an acceptance for honour should always be included in the protest when such acceptance is offered and effected after noting and before the formal protest is drawn up. It is submitted that the better construction is, that when a bill has been accepted for honour and such acceptor dishonours it at

* The words "and such declaration must be recorded by the notary in his register," were repealed by sec. 8 of the Negotiable Instruments Act II of 1885.

(*a*) *Cf.* B. of Ex. Act, sec. 65 (3) (b).

Sec. 111. maturity and it is protested on such dishonour by him, the protest in that case ought to set out all that is required by the clause, and in no other case is the clause applicable.

Acceptance on the bill itself.

Like an ordinary acceptance, acceptance *supra-protest* must be on the instrument itself, and the writing should be under the hand of the party, *i.e.*, the acceptor for honour, and may be in the following form:—"Accepted *supra-protest* in honour of X., Y. A. B." This provision does not, however, preclude the application of the general rule of law that what a person can do, he can get it done by an agent duly authorised.

Acceptance not specifying for whose honour it is made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

NOTES.

As we have seen, the acceptor for honour must declare for whose honour he accepts it, or generally for honour. In the latter case, the section says it will be presumed that it was accepted for the honour of the drawer, and the English law in this respect is the same. (*a*)

Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not: and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity.

(*a*) B of Ex. Act. sec. 65 (4).

NOTES.

Sec. 111.

Rights and duties of acceptor for honour.

The marginal note of the section seems to be narrower than the section itself. The section not only points out the liabilities of the acceptor for honour, but also his rights. An acceptor for honour is liable on the bill to the holder, and to all parties to the bill subsequent to the one for whose honour he has accepted. The undertaking of the acceptor for honour is not an absolute engagement to pay at all events, but only an engagement to pay, provided certain conditions are fulfilled by the holder. These conditions are :-(1) that the bill should be presented for payment to the drawee at its maturity, (2) that if he should refuse to pay again, the bill should be noted or protested for non-payment (*a*), and (3) that in that case, the bill should be presented again for payment to the acceptor for honour. "The acceptance for honour is in its nature qualified, and amounts only to a collateral engagement, *i.e.*, an undertaking to pay, if the original drawee upon presentment to him for payment should persist in dishonouring the bill." (*b*) The clause in the section "if the drawee do not" brings out in full the conditional nature of the acceptance for honour, and such acceptor is liable only in the event of default by the drawee. (*c*).

The acceptor for honour is virtually placed in the position of the person for whose honour he has accepted, with reference to subsequent and prior parties. To parties subsequent to him for whose honour he has accepted he is liable, and any estoppel which can be set up against such party may be set up against the acceptor also. (*d*) If a bill is accepted for the honour of the drawer, such acceptor cannot set up the plea that the payee is a fictitious person, as the drawer cannot set up such a plea. (*e*) Under the English law, it seems such an acceptor cannot set up the forgery of the drawer's signature ; but under the Indian law, he can do so, for the drawer himself has the right to put forward such plea. (*f*). It has been held that an acceptor for honour of an indorser can set up the plea of the forgery of the signature of a prior indorser, (*g*) though an acceptor for honour of the drawer cannot set up such a defence. (*h*)

(*a*) See sec. 112.

(*b*) *Hoare* v. *Cazenove*, (1812) 16 East. 391; *Williams* v. *Germaine*, (1827) 7 B. & C. 468, 477.

(*c*) *Cf.* B. of Ex. Act, sec. 66.

(*d*) *Phillips* v. *Im Thurn*, (1866) L. R. 1 C. P. 463, 467, 471; see notes to sec. 120, *post*.

(*e*) Sec. 120, *post*.

(*f*) Ind. Evidence Act, sec. 117.

(*g*) *Wilkinson* v. *Johnson*, (1824) 3 B. & C. 428.

(*h*) *Phillips* v. *Im Thurn*, (1866) L.R. 1 C.P. 463, 467, 471.

Sec. 112.

The rights of an acceptor for honour are that, he on paying the bill, can sue the party for whose honour he has accepted and all parties prior to him. They are liable to compensate him for all loss or damage sustained by him in consequence of such acceptance. When the bill has been protested for better security, he has his remedy also against the acceptor. Even though the acceptor is an accommodating party for the drawer, the acceptor for honour of the drawer has been held to be entitled to proceed against the Official Assignee of the acceptor. (*a*) It will be noticed that this is an instance of an exception to the general rule that an officious payment made by one person on behalf of another, without the latter's request, cannot be recovered by the former.

Presentment to acceptor for honour.

The second paragraph of the section lays down a condition precedent to the liability of the acceptor for honour, the condition being that the bill should be presented to the acceptor for honour not later than the day next after the day of dishonour; but, in case the address given by such acceptor is a place different from the place of payment, it is sufficient if the bill is forwarded for presentment on the day next after the day of maturity. (*b*)

Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the acceptance for honour, (*c*) and not from the date of noting for non-acceptance as is the law in England. (*d*)

When acceptor for honour may be charged.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

NOTES.

When acceptor for honour liable?

The reasons for requiring the presentment to the drawee for payment and the necessity of protesting or noting thereafter, are set forth by Lord Ellenborough thus:—"The question therefore is, whether presentment to the drawees for payment and a protest for

(*a*) *Vandewell* v. *Tyrrell*, (1827) Moo. & M. 87; In re *Overend Gurney & Co.*, Ex parte *Swan*, (1868) L. R. 6 Eq. 344; but see Ex parte *Lambert*, (1806) 13 Ves. 179. [The first case was a case of cross-accounts rather than of accommodation]

(*b*) B. of Ex. Act, sec. 67 (2).

(*c*) Sec. 23 *ante*.

(*d*) B. of Ex. Act, sec. 65 (5).

non-payment by them is or is not essential as a previous requisite to the maintaining of an action against these defendants, the acceptors for honour of the first indorsers; and this depends upon the nature and obligation of an acceptor for the honour of the drawer or the indorser. If an acceptance in these terms be an engagement by the party giving it that he will pay the bill when it becomes due, and entitles the holder to look to him in the first instance, without a previous resort to any other person, the plaintiffs in this case are entitled to recover. But if such an acceptance be in its nature qualified and amounts to a collateral engagement only, it is an undertaking to pay if the original drawee, upon presentment to him for payment should persist in dishonouring the bill, and such dishonour by him should be notified, by protest, to the person who has accepted for the honour of the indorser, then the necessary steps have not been taken upon this bill, and the plaintiffs cannot recover.

* * * * *

"And indeed the reason of the thing as well as the strict law of the case seems to render a second resort to the drawee proper, when the unaccepted bill remains with the holder; for, effects often reach the drawee who has refused acceptance in the first instance out of which the bill may and would be satisfied, if presented to him again, when the period of payment has arrived. And the drawer is entitled to the chance of benefit to arise from such second demand, or at any rate to the benefit of that evidence which the protest affords, that the demand has been duly made without effect, as far as such evidence may be available to him for purposes of ulterior resort. Such an acceptance is, in effect, equivalent to saying to the holder of the bill 'keep this bill, do not return it, and when the time arrives at which it ought to be paid, if it be not paid by the party on whom it was originally drawn, come to me and you shall have the money.'" (*a*) So, if the acceptor for honour pays the money when the bill is not presented to the drawee or when the bill is not noted or protested for non-payment by the drawee, then he cannot recover the amount paid or any compensation from the party for whose honour he has accepted or any party prior to him. (*b*)

It will be seen that on dishonour by the drawee on presentment by the holder, a further noting or protest is necessary before the acceptor for honour can be made liable. Section 66 (1) of the Bills of Exchange Act requires that the acceptor should receive notice of these

(*a*) *Hoare* v. *Cazenove*, (1812) 16 East. 391, 398.

(*b*) *Williams* v. *Germaine*, (1827) 7 B. & C. 468, 477, per Lord Tenterden, C. J.

Sec. 113.

facts. The present section does not explicitly say so; but it is submitted that as presentment for payment to the acceptor for honour is made obligatory by the section, it follows that he will at the same time have notice of the fact that the bill has been dishonoured by the drawee. That is to say, the demand on the acceptor for honour for payment, is sufficient notice to him of the previous dishonour by the drawee. [See also section 102, *ante*.] It is not clear, however, whether the acceptor for honour should himself give notice to the party for whose honour he had accepted and the parties prior to him. Since there is no specific provision requiring him to do so, it would seem it is not necessary.

Again, it is not clear whether this section should be read subject to the provisions of section 103, which dispenses with further presentment for payment of a bill dishonoured by non-acceptance and made payable at some place other than the residence of the drawee. The considerations set forth in the case above quoted would seem to indicate the negative.

Payment for honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying* or his agent in that behalf has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

NOTES.

Payment for honour of bills.

It is a general principle of law that no person by paying voluntarily the debt of another can make himself his creditor. But, an exception is made in the case of negotiable instruments; and according to this section, when a bill is refused payment, and has been noted or protested for such refusal, any party may pay the amount of the bill for the honour of any party liable to pay it. The reason of this exception is for the benefit of the trade, and it is based on the ground that it induces the friends of the drawer and indorsers to render them

* The words "or his agent in that behalf" were inserted by sec. 9 of the Negotiable Instruments Act II of 1885.

this service, and this prevents the great expense attending the return of a bill, and also preserves the credit of the trader. It is to be noticed that this exception does not extend to promissory notes, even though negotiable, as they are not generally intended for circulation, and any person making a payment for the honour of a party to a note, does so at his own risk, though Chalmers and Chitty say: "that a promissory note is sometimes, but very rarely paid *supraprotest.*" (*a*)

But not of promissory notes.

The section gives the privilege of paying for honour to any person, and does not as in section 108 *ante*, confine it to persons not liable on the bill. Under the Bills of Exchange Act also, the wording is the same. (*b*) So, the drawee or any indorser may pay for honour, though by doing so, such person can acquire no advantage, and can be in no better position than if he had paid it in his own character as drawee or indorser. In the case of an acceptor, he acquires an advantage, very slight, by his paying for honour. Thus, if he had accepted for the accommodation of the drawer, and no provision is made by the drawer for payment at the due date, he may cause the bill to be protested, and then pay *supraprotest* for honour. In that case, he will have a remedy against the drawer *on the bill itself*, but such a course is hardly necessary for him, for, if he is disposed to pay the bill on account of the drawer, he has, independent of any obligation arising from the bill, a right to proceed against the drawer for the money paid on his account. Such cases are, however, rare, and it is generally a third person, not a party to the bill, that pays for honour. On payment *supra protest*, the bill ceases to be negotiable. (*c*)

Who can pay for honour?

Protest must always precede the declaration before a notary and payment for honour. No person can pay for honour and acquire the rights of the payer for honour, unless the bill has been protested for non-payment by the acceptor. Protest, in such cases, is insisted on, perhaps on the ground that if a person pays before such protest, it will generally be presumed that he pays it on behalf of the acceptor, and thus he may forfeit all his rights and claims against the drawer and the indorsers. Moreover, payment for honour being permissible only under the Law Merchant, such payment must be made according to the custom of the merchants, which always required protest as a condition precedent to payment for honour, for protest is a strong evidence of dishonour. (*d*) So necessary was previous protest in such cases, that a protest made after payment was held not to supply the

When protest can be made?

(*a*) Chalmers (10th Edn.) 271; Chitty (11th Edn.) 350, note (a).
(*b*) B. of Ex. Act, sec. 68.
(*c*) Re *Overend, Gurney & Co.*, Ex parte, *Swan*, (1868) L. R. 6 Eq. 344.
(*d*) Re *Wyld*, Ex parte, *Wyld*, (1860) 2 De G. F. & J. 642.

Sec. 113. initial want of the protest, though the bill had been noted for non-payment. (*a*) Now, the rule is not so strict, and under the Bills of Exchange Act, noting alone is sufficient for making such a payment, though protest is necessary, to be drawn up later on. (*b*) In India, even this formality of a protest is not necessary, and noting alone is sufficient to enable a person to pay for honour.

It is convenient here to compare "acceptance for honour" with "payment for honour." Acceptance for honour has to be made before the bill is overdue and by a person who is not already liable on the bill; while payment for honour is made after maturity, after default by the drawer or the acceptor. The payment for honour need not necessarily be by a person who is not already liable on the bill. In the case of an acceptance for honour, the consent of the holder is necessary, and he has the option either to accept or reject an acceptance for honour; there is no such option in the case of payment for honour.

Formalities before payment for honour.

Certain formalities are required to be observed before a payment for honour can be made. The party proposing to make such payment must appear before a notary personally or through an agent, and declare his intention to pay the bill for honour, and state for whose honour he makes the payment. Such a declaration he must take care to get recorded by the notary; otherwise, the payment will not operate as a payment for honour *supra-protest*, but a mere voluntary payment. It is to be noticed in addition, that under section 101 *ante*, a protest must contain the names of the persons by whom, for whom, and the manner in which the payment was offered and accepted.

Is holder bound to accept payment for honour?

There is no express provision in the Act, as in the Bills of Exchange Act, (*c*) as to the consequence of a refusal by the holder to accept a payment for honour. Under English law, he loses his right of recourse against any party who would have been discharged by such payment. But, it may well be inferred from the wording of this section and also from the deliberate omission of the words 'with the consent of the holder,' which we find in section 108 *ante*, that the same is the law in India. The payer is on payment entitled to both the bill and the protest. (*d*)

Two or more payers for honour.

Where two or more persons offer to pay a bill for the honour of different parties, what is the holder to do under the circumstances?

(*a*) *Vandewall* v. *Tyrrell*, (1827) Moo. & M. 87; *Geralopulo* v. *Wieler*, (1851) 20 L.J.C.P. 105, 108.

(*b*) B. of Ex. Act, secs, 68 (3) and 93

(*c*) B. of Ex. Act, sec. 68 (7).

(*d*) B. of Ex. Act, sec. 68 (6).

The Bills of Exchange Act (*a*) says that a person whose payment will discharge most parties on the bill shall have the preference. This question is not easy to settle under the Indian law, and depends more or less on the solution of the question whether the holder is bound to accept a payment for honour. In the absence of an express prohibition, it may be said that it is left to the option of the holder.

Right of payer for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid with interest thereon and with all expenses properly incurred in making such payment.

NOTES.

A person who pays a bill of exchange for honour becomes in effect, though not exactly, an indorsee of the bill. Although there is no indorsement to him, he acquires by payment all the rights of the holder whom he pays, and is entitled to all the remedies on the instrument of such holder. But, these rights and remedies are available only against the person for whose honour he pays and the parties prior to such person. The section, as worded, is not clear on the point, but considering the law in England (*b*) as it was when this Act was passed, it must be understood in the same sense as the provison in section 68 (5) of the Bills of Exchange Act. The title, the payer derives, is that of the holder from whom he receives it, and so, even if it should happen that the person whom he seeks to make liable has a good defence against the party for whose honour he has accepted, such defence will not prevent him from recovering the amount on the strength of the title of the holder. Thus, if he pays for the honour of the person for whose accommodation the bill is drawn, and if the payer for honour gets the instrument from a holder who has nothing to do with the accommodating parties, he is still entitled to sue even the party accommodating. (*c*) The principle can be enunciated thus: 'A person who takes up a bill *supra protest* for the benefit of a particular party to the bill, succeeds to the title of the person from whom, and

---

(*a*) B. of Ex. Act. sec. 68 (2).

(*b*) Re, *Overend Gurney & Co.*, Ex parte, *Swan*, (1868) L. R. 6 Eq. 344.

(*c*) See, Exparte *Lambert*, (1806) 13 Ves. 179.

Sec. 115.

not for whom he receives it, and has all the title of that person to sue upon the bill, except that he discharges all the parties subsequent to the one for whose honour he takes it up, that is, he succeeds to both the rights and the duties of the holder as regards the party for whose honour he pays and all parties prior to him.' (*a*)

When indorsement forged.

Has the payer for honour any remedy against the prior parties, or the person for whose honour he has paid, if the indorsement turns out to be a forgery? Chitty (*b*) and Daniel (*c*) say that he has no remedy against them, and also that he cannot recover back the amount from the person to whom he paid the amount, unless he discovers the mistake and gives notice to him on the very day of payment, so as to enable that person to give due notice of dishonour to the other parties to the bill. (*d*)

From the nature of the right acquired by the payer for honour, it follows that he is entitled on paying to the holder the amount of the bill and the notarial expenses incidental to dishonour and to receive both the bill and the protest. The amount he can recover is not the amount due under the bill, but the actual amount paid by him together with interest and expenses properly incurred in making such payment. After payment for honour, the bill ceases to be negotiable, as the payer for honour into whose hands the bill is left cannot be said to be a drawer, payee or indorsee, capable of negotiating the bill. (*e*)

A payer for honour acquires not merely the rights of the holder, but is also subject to the duties of a holder. Notice of dishonour or protest must be given by him. (*f*)

Drawee in case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon; the bill is not dishonoured until it has been dishonoured by such drawee.

NOTES.

The section must be read as a proviso to section 91 *ante*. The effect of the section is to make the presentment to the drawee in case

(*a*) Re *Overend Gurney & Co.*, Ex parte *Swan* (1868) L.R. 6 Eq. 344.
(*b*) Chitty, (11th Edn.) 351.
(*c*) Daniel, sec. 1257.
(*d*) Cf. *Wilkinson* v. *Johnson*, (1824) 3 B. & C. 428; *Cocks* v. *Masterman*, (1829) 9 B. & C. 902; *London & River Plate Bank* v. *Bank of Liverpool*, (1896) 1 Q. B. 7; *Jones Ltd.* v. *Waring & Gillow Ltd.*, (1926) A.C. 670; see notes under sec. 78 *ante*.
(*e*) *Cf.* Secs. 14 and 51 *ante*.
(*f*) *Goodall* v. *Polhill*, (1845) 14 L. J. C. P. 146.

of need obligatory on the holder, and the non-presentment of the bill to him absolves the drawer from liability. (*a*) In this respect, the law differs from that in England, as embodied in the Bills of Exchange Act, section 15, though before the passing of that Act, such presentment to the drawee in case of need might have been considered necessary in the case of foreign bills. (*b*) The law in America is the same as in India. (*c*) But, it has been held that to charge the acceptor, no such presentment is necessary, as the acceptor is the primary *party*, and no presentment is necessary to charge him under section 64 *ante* (*d*) The Act does not provide within what time the bill should be presented or forwarded for presentment to the drawee in case of need. Presumably, it must be done within a reasonable time, and perhaps the case of presenting the bill to the acceptor for honour may furnish an analogy which may be followed.

Acceptance and payment without protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

NOTES.

May pay or accept without protest.

Protest is not necessary under this section, before the drawee in case of need accepts the bill, and the same is said to be the law in America. (*e*) But in England, the law is different, (*f*) except perhaps in the case of foreign bills. (*g*)

The treatment of the subject about the drawee in case of need under the Act is extremely unsatisfactory, as it does not define his position, nor is there anything in the English Act or in any of the text-books on the subject; Daniel states that if the drawee in case of need pays the bill, the drawer will be liable to him for the full amount. (*h*)

(*a*) *Bahadur Chand* v. *Ghulab Rai*, 11 Lah. 34.
(*b*) Chitty, (11th Edn.) 120.
(*c*) Daniel, sec. 111.
(*d*) *Ardeshir* v. *Khusaldas*, 32 Bom. 247.
(*e*) Daniel, sec. 111.
(*f*) B. of Ex Act. sec. 67 (1).
(*g*) Chitty, (11th Edn.) 120.
(*h*) Daniel, sec. 111.

CHAPTER XII.

OF COMPENSATION.

Rules as to compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee shall * * * * * be determined by the following rules :—

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;

(b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six* per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;

(d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;

---

* The words and brackets " (except in cases provided for by the Code of Civil Procedure, section 532) " were omitted by sec. 3 of the Negotiable Instruments (Interest) Act, 1926 (XXX of 1926.)

Sec. 117.

(e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

NOTES.

Compensation to the holder.

The section lays down rules for determining the amount of compensation to be paid by any party liable on the instrument to the holder or any indorsee, who is entitled to sue on the instrument.

Amount due, together with expenses.

(a). Under the first clause of the section, the holder is entitled to the amount due upon the instrument together with the expenses properly incurred in presenting, noting and protesting it. The amount due on the instrument is not merely the principal sum mentioned thereon, but also includes interest as calculated according to the rules in sections 79 and 80 *ante*. It would have been better, if the section mentioned interest also. (*a*) The expenses incurred in presenting, includes the amount expended in making presentment for acceptance or sight, as well as for payment. Notarial fees and other items of expenditure properly incurred in noting and protesting, may also be charged against the party liable on the instrument. It has been held in England that, where a bill protested for better security was accepted by a bank for the honour of the drawer, the bank could not recover the expenses of the acceptance for honour and the commission for so accepting the instrument. (*b*) This decision will not hold good in India, because such expenses cannot be said to be incurred otherwise than properly. The words 'properly incurred' in the section, are wider than the phrase "the expenses of protest, when protest is necessary," in the English Act. (*c*) Interest on such expenses is not expressly given by the Act.

(*a*) *Cf.* B. of Ex. Act, sec. 57 (1) (b).
(*b*) Re, *English Bank of the River Plate*, Ex parte, *Bank of Brazil*, (1893) 2 Ch. 438.
(*c*) B. of Ex. Act, sec. 57 (1) (c).

Sec. 117.

Expenses incurred in sending notices of dishonour to the drawer and the indorsers, or any extraordinary loss, not necessarily arising from the non-payment of the bill, cannot be recovered. (*a*) Whether commission allowed to an agent for the purpose of collecting the amount due from the bill can be recovered by the holder, is a question to which the section does not afford any answer. Chitty says that such commission forms an item recoverable. (*b*)

Re-exchange.

(b). If the person sought to be charged resides in a country different from the country in which the bill is payable, the holder is entitled to receive a sum which will be the equivalent of the amount due on the instrument in the country in which the amount is payable, that is to say, he is entitled to receive the sum at the current rate of exchange between the two countries. The rate of exchange varies between the two countries where different coins are in circulation, and the holder should not suffer by reason of such variation. Justice Story says, " the proper rule would seem to be in all cases to allow that sum in the currency of the country where the suit is brought, which would approximate most nearly to the amount to which the party is entitled in the country where the debt is payable. " (*c*) The rule may be stated in a different way thus: Where a bill drawn and indorsed in England and payable abroad is dishonoured by non-payment by the acceptor, the holder is clearly entitled as against the drawer and indorser to the amount of re-exchange, that is, the holder in such a case is entitled to receive from the drawer or indorser the value at the rate of exchange on the day on which the bill was dishonoured of the sum expressed on the face of the bill in the currency of the place where it is payable together with interest and such expenses as he may necessarily incur in obtaining at that place the sum in question. (*d*) The re-exchange is nothing more than " the loss resulting from the dishonour of a bill in a country different to that in which it was drawn or indorsed." This 're-exchange' is ascertained by the amount of the sum for which a sight bill (drawn at the time and place of dishonour at the then rate of exchange in the place where the drawer or the indorser sought to be charged resides) must be drawn in order to realise at the place of dishonour the amount of the dishonoured bill, and the expenses consequent on

---

(*a*) *Auriol* v. *Thomas*, (1787) 2 T. R. 52; *Woolsey* v. *Crawford*, (1810) 2 Camp. 445; but see, In re *General South American Co.*, (1877) 7 Ch. D. 637, 644.

(*b*) Chitty, (11th Edn.) 441; Cf. *Banque Populaire de Bienne* v. *Cave*, (1895) 1 Com. Cas. 67.

(*c*) Story on 'Promissory Notes,' sec. 397.

(*d*) *Willans* v. *Ayers*, (1877) 3 A. C. 133, 146; *Suse* v. *Pompe*, (1860) 8 C. B. N. S. 538; In re *Commercial Bank of South Australia*, (1887) 36 Ch. D. 522.

dishonour. (*a*) Sometimes, the term re-exchange is used in a limited sense to connote only the charges or percentage which a person will have to pay for getting a bill for the amount due on it, with the expenses etc.

Rate of exchange.

By clause (b), the holder is entitled to receive the sum at the current rate of exchange ; (*b*) but the clause does not indicate the date when such rate is to be current. Is it the rate at the date of dishonour, or at the date when the holder demands the money, or at the date of suit or judgment ? The theory on which compensation is ascertained being, that the holder sustained loss to the extent of the amount mentioned in the bill or note on the day of dishonour ; the rate which should be taken for calculation is the rate prevailing at the date of dishonour. (*c*) Formerly, it was held in England, that the acceptor was not liable for re-exchange ; (*d*) but, now the law is settled that he is. (*e*) The rate of exchange may in some instances, be fixed by the instrument itself. (*f*)

Compensation to the indorser.

(c). Under clause (c), the indorser who has paid the amount due under the instrument, is entitled to the amount so paid with interest at 6 per cent per annum, from the date of payment until tender or realisation thereof, along with all expenses caused by dishonour and non-payment. If an indorser not liable to pay has paid the money, he cannot recover the amount mentioned under the section. So, an indorser who had been discharged from his liability on the bill by the holder's omission to give notice of dishonour, or an indorser who has indorsed the bill as a gift for no consideration and hence not liable to his immediate indorsee pays the amount due on the bill, he cannot recover compensation mentioned in the section, as he has paid the amount voluntarily. (*g*)

'*The indorser is entitled to the amount so paid*' :—Is it the amount due on the bill, or is it only the amount which he actually pays ? The phrase 'the amount so paid' is ambiguous and is susceptible of both the constructions. Under the English law, it seems, that the indorser can recover from the prior parties, the full amount due under the instrument ; if it is only compensation that is to be

(*a*) Chalmers (10th Edn) p. 226 ; *De Tastet* v. *Baring*, (1809) 11 East. 265.

(*b*) *Lindsay, Gracie Co.* v. *Russian Bank for Foreign Trade*, (1918) 34 T. L. R. 443.

(*c*) *Cf.* In re *British American Continental Bank, Ld.*, (1922) 2 Ch. 575; *Ibid*, (1922) 2 Ch. 589 ; *S. S. Celia* v. *Volturno*, (1921) 2 A. C. 544 ; *Muller Maclean & Co.* v. *Ataulla & Co.*, 51 Cal. 820.

(*d*) *Napier* v. *Shneider*, (1810) 12 East. 420.

(*e*) B. of Ex. Act, sec. 57 (2) ; Ex parte *Robarts*. (1886) 16 Q. B. D. 702, affirmed in 18 Q. B. D. 286. Re *General South American Co.*, (1877) 7 Ch. D. 637.

(*f*) *Willans* v. *Ayers*, (1877) 3 A. C. 133.

(*g*) Cf. *Sleigh* v. *Sleigh*, (1850) 5 Ex 514.

Sec. 117. awarded, which seems to be all that a person is entitled to under this section, it is submitted that the indorser who pays, is entitled only to the actual amount he pays, no doubt with interest and other expenses mentioned in the section. (*a*)

Interest.

Interest at 6 per cent, is given under this clause on the amount paid to the holder. Even if interest at a higher rate is mentioned in the instrument, the indorser paying the instrument cannot take advantage of that rate, but he can get only 6 per cent interest under this section, from the date of his payment, until tender or realisation by him. It is to be noted that the indorser can charge his prior party with all the expenses caused by dishonour. This may include expenses of postage, stamp for receipt of the payment, but not the costs of an action brought by the holder against him on the instrument, unless there was a contract of indemnity or a request to defend the action by the party sought to be charged. (*b*) No interest can be charged on such expenses under the section.

Re-exchange to indorser.

(d). Clause (d) lays down a rule with reference to indorsers similar to that laid down by clause (b) which deals with the case of a holder. The indorser too is entitled to receive the equivalent of the sum which he has paid, according to the current rate of exchange, *i.e.*, current at the date of payment by the indorser. It is not clear why the rules in clauses (b) and (c), should not be extended to the case of a drawer also. Though the section is silent on the point, these rules may be applied to a drawer taking up the bill. (*c*)

Drawing bill for compensation.

(e). Clause (e) enables the person entitled to compensation to draw a bill payable at sight or on demand, on any party liable to compensate him for the amount due to him, together with all the expenses properly incurred by him. The bill mentioned in this clause is called a 're-draft' under English law. An indorser who pays a re-draft may, in like manner, draw a bill on an antecedent party, the bill being negotiated at the place where the dishonoured bill was payable. (*d*) The effect of drawing such a bill is to put into the pockets of the holder, at the proper time and place, the exact sum which he ought to have received from the acceptor. The new bill must be accompanied by the instrument dishonoured, and the protest, if there be one. The section is imperative on the point. If the party

'Re-draft.'

(*a*) Cf. *Wiffen* v. *Roberts*, (1795) 1 Esp. 261 N. P.

(*b*) *Dawson* v, *Morgan*, (1829) 9 B. & C. 618 ; *Garrard* v. *Cottrell*, (1847) 10 Q. B. 679.

(*c*) *Cf.* B. of Ex. Act, sec. 57 (2) ; Chalmers (10th Edn.) 224 & 225; Ex parte *Robarts*, (1865) 16 Q.B.D. 702, affirmed in 18 Q.B.D. 286 ; *Suse* v. *Pompe*, (1860) 8 C. B. N. S. 538.

(*d*) *Mellish* v. *Simeon*, (1794) 2 H. Bl. 378.

on whom the re-draft is drawn, dishonours it, he is liable to compensate, according to the rules laid down in this section.

Compensation by a banker.

The section does not in terms apply to compensation payable by a banker for dishonouring a customer's cheque without justification, except in the case where the cheque is drawn to the drawer's order, (*a*) under section 31 of the Act. But, section 31 *ante* provides that the banker must compensate him for any loss or damage caused by such default. The principle on which such compensation is to be calculated is not clear, though under the English law no actual damage need be proved, for it is discredit to a person and injurious to his reputation that a cheque should be dishonoured; the smaller the cheque, the greater the possible damage to credit. (*b*)

(*a*) *Kinlan* v. *Ulster Bank*, (1928) 1 Ir. R. 171.

(*b*) *Marzetti* v. *Williams* (1830) 1 B. and Ad. 415.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Presumptions as to negotiable instruments—

118. Until the contrary is proved, the following presumptions shall be made:—

of consideration;

(a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

as to date;

(b) that every negotiable instrument bearing a date was made or drawn on such date;

as to time of acceptance;

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

as to time of transfer;

(d) that every transfer of a negotiable instrument was made before its maturity;

as to order of indorsement;

(e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

as to stamp;

(f) that a lost promissory note, bill of exchange or cheque was duly stamped;

that holder is a holder in due course.

(g) that the holder of a negotiable instrument is a holder in due course: Provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody there-

of by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration the burthen of proving that the holder is a holder in due course lies upon him.

Sec. 118.

NOTES.

This chapter deals with the special rules of evidence applicable to negotiable instruments :

Presumption as to consideration.

(a). Under the Common Law, a person seeking to enforce a simple contract must aver that he has paid the consideration, and must also support the same by proof. For purposes of trade, the usage and custom of trade has relaxed this rule in respect of negotiable instruments, and now every bill or note is presumed to be honest at its inception. But, it has been held that this presumption does not arise, if the parties go to trial on the issue of want of consideration, if the finding of the Court is against the plaintiff, (*a*) and if a decree cannot be given for the full amount on the strength of the presumption, when the plaintiff gives evidence to show that he paid some consideration for it, but gives no evidence as to how much he paid for it. (*b*) This was the rule even before the Act came into force, for it finds a place in illustration (c) to section 114 of the Evidence Act, which gives the Court discretion to presume such facts. Under this section, the presumption is not left to the discretion of the Court; and in every suit on negotiable instruments, the Court shall presume that such instruments were made, drawn, accepted or negotiated for consideration. This throws the burden of proving failure of consideration on the maker of the note, (*c*) and the burden is not shifted by the mere fact that part of the consideration is shown not to have been paid in cash as stated in the note. (*d*) But, where in a suit to recover money on a note which stated that the amount was borrowed in cash, and where the plaintiff alleged the same, but where after the defendant's denial of any portion of the alleged consideration, plaintiff stated that the consideration was a release of certain proprietary rights to the defendant, it was held that the initial presumption of consideration had been rebutted, and that the onus had been shifted on to the plaintiff to prove

(*a*) In re, *Kannuswami Pillai*, 9 I. C. 79.

(*b*) *Kishen Ballabh* v. *Ghure Mal*, 13 A. L. J. 322; also *Benode Behari* v. *Janki Kalwar*, 29 I. C, 468.

(*c*) *Hans Raj* v. *Lachmi Narain*, (1923) Lah. 388; *Jagmohan* v. *Mendhai*, (1932) All. 164.

(*d*) *Balkisandas* v. *Rambakdas*, (1930) Nag. 187.

Sec. 118. consideration. (*a*) Thus, it may be said that where the recital of the consideration in the promissory note is admittedly false, the presumption is displaced, and the burden of proving consideration is shifted on to the holder of the pronote as against the maker of the note himself, and much stronger therefore would be the case when the consideration has to be proved against third parties. (*b*)

It is *prima facie* incumbent upon the defendant who wants to dispute the plaintiff's title to recover the money on the ground of want of consideration, to allege such want of consideration, and to prove the same. (*c*) So, where in a suit on a promissory note, the defendant denied execution but did not plead want of consideration, and admitted the correctness of the alleged previous transactions, it was held that the question of consideration could not be gone into. (*d*) This privilege conceded to negotiable instruments is available not only between the original parties, but also between others who by indorsement or otherwise, become *bona fide* holders of the instrument. The result may at times be to secure decrees for money to plaintiffs, who never paid the *quid pro quo*. The Legislature has, in the interest of the business community generally, adopted this policy, and in pursuance of the same, the onus in such cases has been laid upon the person who promises to pay upon a negotiable instrument. The rule may also be said to be based on the fact, that a person is not bound to keep careful proof of matters which the law says he need not prove. (*e*) This presumption that the holder of a bill has given consideration, is rebutted when it appears that the acceptance is a forgery or that the instrument has been obtained by means of a fraud or an offence, or for an unlawful consideration. (*f*) Again, the presumption is not conclusive, and is sometimes very easily shifted. Thus, where a money-lender sued the defendant who, at the time of the execution of the note, was a young man of extravagant habits and where the defendants alleged that a part of the consideration was paid and that part was immoral, the Court laid down the following rule with reference to the onus of proof. "The ordinary rule that a negotiable instrument has been exe-

---

(*a*) *Zohra Jan* v. *RajanBibi*, 28 I. C. 402; Cf. *Venkata Ragavulu Chetty*. v. *Sababathy Chetty*, (1911) 2 M. W. N. 253.

(*b*) *Palaniappa* v. *Rajagopala*, (1928) M. W. N. 425; see *Sundar* v. *Khushi Ram*, (1927) Lah. 864; *Thakur Din* v. *Oudh Commercial Bank*, 57 I. C. 20.

(*c*) *Percival* v. *Frampton*, (1825) 2 C. M. & R. 180; *Syed Hussein* v. *Babu Durga Charan*, 9 O. C. 315; *Muhammad* v. *Mozam Ali*, 67 I.C. 684; *Madho Ram* v. *Nandu Mal*, 1 Lah. 429.

(*d*) *Maung Me* v. *Ma Sein*, 2 I. C. 539; *Fleming* v. *Bank of New Zealand*, (1900) A.C. 577, 584.

(*e*) *Kishenchand*. v. *Jamna Das*, 5 I. C. 891; *Hindustan Assurance and Mutual Benefit Society Ltd*. v. *Gurdit Singh*, 6 Lah L. J. 183.

(*f*) *Nasir Ali* v. *Kher Chand*, 36 I. C. 996; *Das* v. *Rangasami*, (1927) Rang. 188.

cuted for value is so much weakened by the allegation of the defendant, a young man, that he has not received the full consideration, and this is sufficient to shift the burden of proof, and to throw upon the money-lender the obligation of satisfying the Court, that he has paid the consideration in full." (*a*) Where in a suit upon three promissory notes executed in quick succession of each other by a young man who died pending the suit leaving a young widow, it was found that he was a man of considerable property, but at the time out of possession, the property being in the management of his elder brother, and that he was a man of extravagant habits, it was held that the onus would be shifted on to the plaintiff, to make out that full consideration was paid as alleged by him. (*b*) Other circumstancial evidence also may be given to rebut the initial presumption. (*c*) Thus, where the plaintiff's agent made inconsistent statements about the consideration, the Court held that the onus was shifted. (*d*) This in no way touches upon the ordinary rule that the defendant must prove absence of consideration, if that is his case. (*e*) The defendant may even take advantage of anything appearing in the plaintiff's evidence to show that no consideration was paid; (*f*) for example, when the note recites that the consideration was in cash, but the plaintiff admitted that it was partly in cash and the rest in some other way, the onus is on him to prove the latter; otherwise, his claim will fail to that extent. (*g*) The plaintiff may always prove that the consideration recited in the note is not the true one, but that the note was executed for a different consideration. (*h*) The Calcutta High Court has held from the relationship in which the parties stood and from the alarm of the Court lest by means of such relationship any coercion or undue influence should have been exerted, that a solicitor is bound to prove the debt, and cannot merely produce his securities and say that they prove the existence of the debt. (*i*) This is also the practical effect of illustration (c) to section 114 of the Evidence Act and its explanation. The presumption mentioned in the section does not arise in the case

---

(*a*) *Moti Gulabchand* v. *Mahomed Mehdi*, 20 Bom. 367, 369; *Miran Baksh* v. *Muhammad Hussain*, 2 P.R. 1902; *Ram Raghubir* v. *Jafar Mirza*, 5 O.C. 307; *Barkat Ullah* v. *Muhammad*, 84 I.C. 866.

(*b*) *Sundrammal* v. *Subramania Chettiar*, 29 M.L.J. 236; see also *Sami Sah* v. *Parthasarathy*, 31 I.C. 739. *Cf.* O.S.A. 59 of 1926 (Madras), [indorsement by Hindu widow, onus not shifted.]

(*c*) *Singar Kunwar* v. *Basdeo Prasad*, (1930) All. 568; *Jawahar Lal* v. *Manna Lal*, (1930) Oudh. 108.

(*d*) *Sirajuddin* v. *Champo*, 3 Lah. L.J. 439; *Sundar Singh* v. *Khushi Ram*, (1927) Lah. 864.

(*e*) *Muhammad Sah Shafi* v. *Muhammad Mozam*, 67 I.C. 684. (All).

(*f*) *Muhammad Shafi* v. *Mozam Ali*, 67 I.C. 684.

(*g*) *Lala Shambu* v. *Lala Lallu*, (1924) All. 256; *Sundar Singh* v. *Kushi Ram*, (1927) Lah. 864.

(*h*) *Ganapati* v. *Munisami*, 5 I.C. 754.

(*i*) *Brojendra Nath* v. *Sreemutty Luckhey Money*, 6 C.W.N. 816.

Sec. 118. of non-negotiable instruments; (*a*) and in the case of Government promissory notes which come within the definition of Negotiable instruments, the presumption laid down in this section is always raised. (*b*) Under Hindu Law, it is doubtful whether a promissory note imports consideration; (*c*) at all events, it is certain that the maker may show that there was no consideration. Not even the fact that the defendant accepted or indorsed the bill for the accommodation of the drawer and that he received no consideration for so accepting or indorsing it, will avail the defendant to shift the onus of proof on the plaintiff, though the rule may be otherwise, when the holder's title is impeached on the ground of fraud. (*d*) The presumption as to receipt of full consideration arising from a debtor's signature on a promissory note, can only be invoked against the debtor personally, but not against the Official Receiver or a creditor in insolvency proceedings. (*e*) Again, the presumption as to consideration does not apply to criminal cases, and the prosecution has to prove that consideration was in fact paid. (*f*) Where cash payment was alleged as a consideration for a promissory note, and the parties went into evidence and the Court disbelieved the plaintiff's case as to consideration, the presumption of consideration could not avail the plaintiff in revision. (*g*)

Presumption as to date.

(b). Date is not an essential requisite of a negotiable instrument. But, if it is dated, the presumption is that it has been made or drawn on such date, unless the contrary is proved. (*h*) If a promissory note is proved to be genuine, and it bears the date and place of execution, the presumption is that it was executed at the place and on the date it shows, and the onus lies on the party pleading a different place and date to show it. (*i*) If proof to the contrary would work hardship on the indorser, etc., such proof will not be allowed. (*j*) Under this clause, even if an indorser fills up a blank space left with reference to date, the presumption would apply.

As to time of acceptance.

(c). Unless the contrary appears by its terms, a bill of exchange is *prima facie* deemed to have been accepted before maturity and within a reasonable time after its issue, but there is no presumption as to the

(*a*) *Chocken* v. *Coomarappa Chetti*, L.B.R. (1893—1900), 537; *Tirath Ram* v. *Autar Singh*, 22 I.C. 861; *Barkat Ullah* v. *Muhammad*, 84 I.C. 866.

(*b*) *Hira Lal* v. *Raj Kumar*, 8 I. C. 796.

(*c*) *Ram Lal Mookerjee* v. *Haran Chandra Dhar*, 3 B.L.R. (O.C.J.) 130.

(*d*) *Mills* v *Barber*, (1836) 1 M. & W. 425.

(*e*) *Ram Lal* v. *Kashichorren*, 26 A.L. J. 241; Re *Union Indian Sugar Mills Coy.* v. *Brij Lal*, (1927) All. 426.

(*f*) *Sakhawat* v. *Emperor*, 18 A. L. J. 1151.

(*g*) In re *Kannusami*, 8 M. L. T. 463; *Cf.* O.S.A. 59 of 1926 (Mad.).

(*h*) *Raghunathachari* v. *Aravamuthu*, 34 I. C. 617; B. of Ex. Act, sec. 13 (1).

(*i*) *Kirmany* v. *Aga Ali*, (1928) Mad. 919; *Drain* v. *Harvey*, (1855) 17 C. B. 257.

(*j*) Daniel, sec. 83.

exact date of its acceptance. For example, B accepts without dating a bill drawn payable three months after date. He attains majority the day before the bill matures. This is *prima facie* evidence that B accepted it while he was an infant. (*a*) When the acceptance bears no date, there is no presumption that it was accepted on the day of drawing, because the presumption under the section is only that it was accepted after the date of drawing. (*b*) This clause only applies when the acceptance is not dated; if the acceptance bears a date, it will *prima facie* be taken as evidence of the time on which it is made; (*c*) but evidence is admissible to prove that it was accepted on a different date. (*d*) A bill is not invalid by reason only that it is ante-dated or post-dated. (*e*)

As to time of transfer.

(d). Except where the indorsement bears a date after the maturity of the bill, every indorsement is *prima facie* deemed to have been effected before the bill was overdue. (*f*) There is no presumption as to the exact date of negotiation, and circumstances or strong suspicion short of direct evidence, may rebut the *prima facie* presumption enacted in the clause. The presumption is so weak that slight suspicion may blow it away, as where a bill is made payable in so short a time as one day after date, because in such a case it is improbable that it could be circulated within so short a time. (*g*)

As to the order of indorsements.

(e). When there are two or more indorsements on a negotiable instrument, each indorsement is deemed to have been made in the order in which it appears on the instrument. But, this presumption may be rebutted by evidence, as where successive indorsers of a note were allowed to show between themselves that they were co-sureties. (*h*)

As to stamp on lost bills, etc.

(f). The presumption of law is that a lost promissory note or bill of exchange was duly stamped, (*i*) and the stamp was also duly cancelled. (*j*) Such presumption may also arise when the negotiable instrument has been destroyed.

(*a*) *Roberts* v. *Bethell*, (1852) 12 C. B. 778.

(*b*) *Begbie* v. *Levi*, (1830) 1 Cr. and J. 180.

(*c*) *Glossop* v. *Jacob*, (1815) 4 Camp. 227; B. of Ex. Act, sec. 13 (1).

(*d*) *Pasmore* v. *North*, (1811) 13 East. 517; *Kirmany* v. *Aga Ali*, (1928) Mad. 919.

(*e*) B. of Ex. Act, sec. 13 (2); *Nallaya* v. *Palani*, (1926) M. W. N. 726.

(*f*) *Parkin* v. *Moon* (1836) 7 C. & P. 408; *Lewis* v. *Parker*, (1836) 4 A. & E. 838.

(*g*) Daniel, sec. 785.

(*h*) *Macdonald* v. *Whitfield*, (1883) 8 A.C. 733; *Kothandaramasami* v. *Muthiah Chetty*, 45 I. C. 186.

(*i*) Cf. *Marine Investment Co.* v. *Haviside*, (1872) L. R. 5 H. L. 625; See *Rokia Bi* v. *Haji Abdul*, (1932) M. W. N. 432.

(*j*) *Atmaram* v. *Notandas*, (1930) Sind 4; *Pesussumal* v. *Girgam Mayal*, (1921) Sind, 72.

Sec. 118.

Of holder being a holder in due course.

(g). The principle mentioned in this clause applies in favour of a holder, who is defined by section 8 of the Act. Every such holder is presumed to be a holder in due course; for instance, an indorsee from the payee must be presumed, until the contrary is shown, to have been a holder in due course, and he would be unaffected by the failure of consideration as between the drawer and the payee. (*a*) As to who is a holder in due course, see section 9. He is presumed to have paid the consideration for the instrument, (*b*) and in good faith. (*c*) The Court has, in each case to find, after giving due weight to this legal presumption, as a matter of fact whether the holder is a holder in due course. It is usually almost impossible to prove this by direct evidence, and the question has to be decided by probabilities, mutual position of the parties and other circumstances connected with the case. (*d*) Thus, where a book-maker gets a cheque which had been given in a betting transaction indorsed in his favour, by one with whom he has had transactions for a long time, the presumption in his favour is rebutted, and he is bound to prove not only consideration but also that he gave it without having sufficient cause to believe that the cheque was taken in a betting transaction. (*e*) If it is shown that the instrument was obtained from its lawful holder or from any person in lawful custody thereof, by means of an offence or fraud, or was obtained from the maker or acceptor by such means, the burden of proving that the holder is a holder in due course lies upon such holder; (*f*) and the holder in such a case has to prove not only that he is a holder for value, but also that he became the holder before it became payable, and without sufficient cause to believe any defect in the title of his transferor. (*g*) Where the defendant denies execution but fails to plead want of consideration, he cannot be permitted to prove it after it is found that the note was in fact executed. (*h*) Lord Blackburn thus observes in *Jones* v. *Gordon*: (*i*) "I take it to be perfectly clear that when a bill of exchange is on the face of it a good bill, and there is nothing on the face of it to show the contrary, it *prima facie* imports value. *Prima facie*, a bill of ex-

Otherwise in case of fraud, etc.

(*a*) *Sakharam* v. *Gulab Chand*, 16 Bom. L. R. 743; *Kishan Bahadur* v. *Sassaram Ltd.*, 2 Pat. L. R. 54; *Hindustan Assurance and Mutual Benefit Society* v. *Gurdit Singh*, 6 Lah. L. J. 183.

(*b*) *Sundar Singh* v. *Khushi Ram*, (1927) Lah. 864.

(*c*) *D. N. Shaha* v. *Bengal National Bank*, 47 Cal. 861; *Royal Bank of Scotland* v. *Rahim*, 49 Bom. 270.

(*d*) *Ramaswami* v. *Ganapathi*, 24 I. C. 709.

(*e*) *E. Stewart* v. *G. W. Mercado*, 1 Bur. L. J. 40.

(*f*) *Daulatram* v. *Nagindas*, 15 Bom. L. R. 333; *Banku Behari* v. *Secy. of State for India*, 36 Cal. 239; *Kurundaliammal* v. *Kunhi Kannan*, (1930) Mad. 141.

(*g*) *Ramanadhan* v. *Gundu*, (1928) Mad. 1238.

(*h*) *Maung Me* v. *Ma Sein*, 2 I. C. 539.

(*i*) (1877) 2 A. C. 616, 625, 627.

change is a good bill of exchange, and it is necessary to show the contrary. But then, I think it is clear both upon the authorities, and also, as it seems to me, upon good sense, that when it is shown that a bill of exchange was a fraudulent one or an illegal one or a stolen one in any of those cases, it being known that the person who holds it was a party to that fraud, to that illegality, or to that theft, and therefore could not sue upon it himself, the presumption is so strong that he would part with it to somebody who could sue for him that that shifts the burden. * * * * * I should be unwilling to say precisely whether it shifts the onus on him to show that he gave value *bona fide*, so that, although he gave value, he must give some affirmative evidence to show that he was doing it honestly, or whether the onus of proving that he is dishonest, or that he had notice of things that were dishonest, remains on the other side, although he is bound to prove value. The language of the quotation from Baron Parke would seem to show that the *onus* as to both is shifted ; but I do not think that it has ever been decided. I have no doubt, that in proving value, it may be proved that he himself took the bill under such circumstances, that although he gave value, he could not sue upon it." Though the dictum of Parke, B. in *Bailey* v. *Bidwell*, (*a*) that the onus with reference to both, *i.e.*, consideration and good faith is shifted, was doubted by Lord Blackburn in the above-mentioned case, both the Indian and the English Legislatures have adopted the rule laid down by Parke, B. (*b*) The holder under the circumstances has to prove not only that he gave consideration, but also that he gave it without having sufficient cause to believe that any defect existed in the title of the person from whom he took the instrument. (*c*) In an action against a wife upon a joint and several promissory note of her husband and herself, signed by her as surety for the repayment of sums advanced by the plaintiff to her husband, the defendant pleaded that she was induced to sign the notes by duress on the part of her husband and the plaintiff knew of that duress. It was held that she could not succeed by merely showing that there was duress but that she must further prove the knowledge of the plaintiff of the duress, and that it is not shifted on to the plaintiff. (*d*) The corresponding provision, section 30, sub-section 2 of the English Act, has been held, not to apply to a case where the holder seeking to enforce the instru-

---

(*a*) (1844) 13 M. & W. 73.

(*b*) *Talam* v. *Haslar*, (1889) 23 Q. B. D. 345, per Charles, J. ; B. of Ex. Act, sec. 30 (2) ; Cf. *Jones* v. *Gordon* (1877) 2 A. C. 616, 628.

(*c*) *Ramanadhan* v. *Gundu*, (1928) Mad. 1238.

(*d*) *Talbot* v. *Von Boris and Wife*, (1911) 1 K. B. 854.

Sec. 118.

ment is the person to whom it was originally delivered and in whose possession it remains. (*a*)

The wording of the section is somewhat ambiguous. It is not clear whether the phrase "for unlawful consideration" is to be taken with the previous clause or only with the clause "has been obtained from the maker or acceptor, etc." If the latter construction were adopted, a distinction between the case of a maker or acceptor and that of drawer or indorser would follow. Such a distinction is opposed to the English law, (*b*) and cannot be supported on any rational basis.

Thus, where the maker gives a note for an illegal consideration (*c*) or where the agent of the holder to whom the bill is given, fraudulently negotiates it to a third person, (*d*) or where a bill payable to bearer is stolen by a third person, (*e*) it is incumbent on the holder to prove that he is a holder in due course; otherwise, he cannot recover. Again, where an acceptor accepts a bill drawn in renewal of a forged bill, (*f*) or where a partnership bill is fraudulently negotiated by a partner for his private debt, (*g*) the onus is upon the holder to prove that he is a holder in due course.

Fraud or illegality, shifts onus.

It is to be noticed that the shifting of the burden takes place only when any offence, fraud or illegality is proved in the first instance. (*h*) But, where there is alleged mere absence of consideration between the original parties, there is no presumption of absence of consideration, and the defendant is bound to prove that allegation in his plea. So, where a bill is accepted for accommodation or where a note is given in consideration of a wagering contract (not illegal under the English law), the ordinary presumption of a holder being a holder in due course will apply. (*i*)

Other presumptions.

Apart from the presumptions laid down in the section, there are other presumptions which are properly and usually made in the case of negotiable instruments. Unless the contrary appear on the face of

---

(*a*) Chalmers (10th Edn.) p. 112.

(*b*) *Berry* v. *Alderman*, (1853) 14 C. B. 95.

(*c*) *Bailey* v. *Bidwell*, (1844) 13 M. & W. 73.

(*d*) *Smith* v. *Braine*, (1851) 16 Q. B. 244; *Tatam* v. *Haslar*, (1889) 23 Q. B. D. 345; *Dublin Wicklow & Wexford Ry. Co.* v. *Slattery*, (1878), 3 A. C. 1155, 1203.

(*e*) *Raphael* v. *Bank of England*, (1855) 17 C. B. 161; See Byles. (19th Edn.) p. 126 (m).

(*f*) *Mather* v. *Maidstone*, (1856) 25 L. J. C. P 310.

(*g*) *Hogg* v. *Skeen*, (1865) 34 L. J. C. P. 153; Cf. *Musgrave* v. *Drake*, (1843) 5 Q. B. 185.

(*h*) *Ramdas* v. *Lalchand*, (1927) Lah. 137.

(*i*) *Fitch* v. *Jones*, (1885) 5 E. & B. 238; *Mills* v. *Barber*, (1836) 1 M. & W. 425.

the bill, the holder may treat it as an inland bill. (*a*) When a bill is no longer in the hands of the party who has signed it as drawer, acceptor or indorser, a valid and unconditional delivery is presumed; and in the hands of a holder in due course, the presumption is conclusive. (*b*)

Presumption on proof of protest.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

NOTES.

Protest being a document drawn up in the course of official business by an officer appointed by the Governor-General in Council, a presumption is made in its favour, that whatever is stated therein has been regularly performed. This presumption does not arise unless there is a proper protest according to sections 99, 100 and 101 of the Act. A mere entry 'Noted for non-payment' without date of dishonour or certificate of protest is not a proper protest, and the presumption under the section does not apply. (*c*) Protest being usually drawn after a demand either for acceptance or for payment by the notary or his clerk, the Court will be justified in inferring that such demand and refusal, *i.e.*, dishonour, took place in due order. (*d*) In any case, protest can operate as *prima facie* evidence of dishonour, and is open to rebuttal by the other side. The presumption does not go any further than that there was a dishonour in fact, though, in some cases, the protest may be taken as *prima facie* evidence of all that is mentioned therein. Thus, the production of protest is no evidence of notice, (*e*) nor of any other collateral fact, such as, that the drawee had no effects or funds of the drawer in his hands.

Estoppel against denying original validity of instrument.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in

---

(*a*) B. of Ex. Act, sec. 4 (2) (b) & (3).

(*b*) See notes to sec. 47 *ante*; B. of Ex. Act, sec. 21 (2).

(*c*) *Veerappa Chetty* v. *Vellayan*, (1919) M. W. N. 780.

(*d*) Odgers. J. in S. A. 2152 of 27 (Mad.)

(*e*) *Ibid.*

Sec. 120. due course, be permitted to deny the validity of the instrument as originally made or drawn.

NOTES.

Maker and drawer estopped.

This section enacts an estoppel against the maker of a note and the drawer of a bill of exchange or cheque, which may be said to be an instance of an estoppel by contract. The section presupposes the existence of a duly stamped instrument which the Court is entitled to look at before applying the estoppels under the section. (*a*) The maker of the note and the drawer of a bill of exchange or cheque, are directly responsible for the bringing into being of the instrument; and, so, they cannot be allowed afterwards to say that the instrument as originally drawn was not valid. Speaking of estoppels in relation to negotiable instruments, Mr. Caspersz says: "The situation between the parties to a commercial instrument is no doubt to be regarded as one of contract, the parties having agreed that the instrument is to be founded upon certain facts. When therefore the position of one by acting on that agreement is altered, the other ought not to be allowed to deny it. The resemblance to estoppel by representation is however an artificial one, since, there is no representation beyond what is in the contract itself." (*b*) These estoppels spring from the nature of the transaction founded upon mercantile custom, and may now be regarded as statutory estoppels.

From denying the validity.

This section does not, however, preclude the drawer of a bill of exchange and the maker of a note from setting up, in a suit by the holder in due course, the plea that he never drew or made the instrument and that his name to it has been forged.

Estoppel against acceptor for honour.

An acceptor for honour of the drawer is bound by all the estoppels that bind such drawer, and so, such an acceptor is estopped from denying the validity of the bill as originally drawn. The further question whether the acceptor for honour of the drawer can set up the plea of forgery of the name of the drawer for whose honour he accepted it, is not answered by this section, nor by any other section of the Act. It depends on the answer to the question whether he accepts the signature of the drawer as genuine; and as regards that, there is a conflict of opinion even among text-writers. On the strength of a case decided in England, the English authors are unanimous in their opinion that an acceptor for honour cannot set up the forgery of the name

(*a*) *Chotey Lal* v. *Girraj*, 48 All. 332.
(*b*) Caspersz on 'Estoppel', (3rd Edn.) 143.

of the person for whose honour he accepted. (*a*) Even among the American authorities, Daniel seems inclined to this view, but Parsons is of a contrary opinion. No doubt the acceptor for the honour of the drawer cannot set up that the payee is a fictitious person, because the drawer under such circumstances cannot set up such defence, and the acceptor for honour stands in the position of the drawer. But the drawer can always set up that his signature to the bill is forged, and hence the acceptor for honour cannot be held liable in such a case on the ground that whatever estops the drawer, estops also the acceptor for his honour. The argument urged by text-writers is that the acceptor for honour cannot set up that the signature of the drawer is forged, because the ordinary acceptor cannot do so. (*b*) But under the Indian law, the acceptor can always show that the signature of the drawer is a forgery (*c*) and so the ground of estoppel against the acceptor for honour of the drawer fails.

Case of acceptor considered.

The ordinary acceptor of a bill is not mentioned in the section, and his case is provided for in section 117 of the Evidence Act, whereby the acceptor of a bill of exchange cannot deny the authority of the drawer to draw the instrument, but may show that the bill was not really drawn by the drawer. Thus, under the Indian law an acceptance is no admission of the drawer's signature and it is open to an acceptor to show even against a holder in due course that the drawer's signature is a forgery. In this respect the law in India is in direct conflict with the English law. (*d*)

In addition to the estoppels mentioned above, under the English law, the acceptor of a bill is precluded from denying to a holder in due course: (1) the existence of the drawer, and his capacity and authority to draw the bill, (2) the capacity of the drawer to indorse in the case of a bill payable to his order, and (3) the existence and the capacity of the payee. (*e*) Under the Indian law, the acceptor cannot deny the existence of the drawer, *i.e.*, he cannot plead that the drawer is a fictitious person because the liability of the acceptor under section 42 is based on that estoppel; this point, however, is only left to be inferred under the Act. The acceptor cannot deny the authority of the drawer to draw the bill under section 117 of the Evidence Act, but that section does not speak of the capacity of the drawer. But it may be said that the section of the Evidence Act includes not only authority conferred

(*a*) *Phillips* v. *Im Thurn*, (1866) L. R. 1 C. P. 463; Cf. *Wilkinson* v. *Johnson*, (1824) 3 B. & C. 428.

(*b*) *Phillips* v. *Im Thurn*, (1866) L.R. 1 C. P. 463.

(*c*) Ind. Evidence Act, sec. 117. Expln. (1)

(*d*) B. of Ex. Act, sec. 54 (2) (a); *Sanderson* v. *Collman*, (1842) 4.M. & Gr. 209; see *Cooper* v. *Meyer*, (1830) 10 B. & C. 468.

(*e*) B. of Ex. Act, sec. 54 (2).

Sec. 121.

by acts of parties, but also authority conferred by operation of law, *i.e.*, capacity. In the case of a bill payable to drawer's order, the acceptor cannot under section 117 of the Evidence Act question the drawer's authority to indorse such bill. Here again, the same difficulty arises, *i.e.*, whether authority includes capacity.

Though no special provision is to be found in the Act estopping the acceptor from setting up the incapacity of the drawer, we may gather from section 26 of the Act that it is useless for the acceptor to set up such a plea. (*a*) As regards the estoppel against denying the payee's capacity, see the next section.

Scope of section.

The present section is wider than the section of the Evidence Act; for the estoppel under this section precludes the drawer and the acceptor for the honour of the drawer from denying the validity of the instrument as originally drawn. Any circumstance which will vitiate the contract between the original parties to the bill cannot be set up by persons mentioned in the section such as fraud, want of consideraation, coercion, etc. He cannot deny the existence of the payee or his then capacity to indorse, (*b*) but it has been held that in a suit by the payee on a promissory note which offends against the Paper Currency Act and which is therefore on the face of it illegal, the maker is not estopped from setting up the illegality of the instrument since the payee under such a promissory note cannot be said to be a holder in due course. (*c*)

Estoppel against denying capacity of payee to indorse.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

NOTES.

The words 'to order' were substituted for the words 'to, or to the order of, a specified person' by section 5 of the Negotiable Instruments (Amendment) Act VIII of 1919.

By the very act of making a promissory note, the maker engages to pay the amount to the payee named in the instrument, and thus

(*a*) *Chengalraya* v. *Nainiappa*, 117 I. C. 133.

(*b*) B. of Ex. Act. sec. 55 (b)

(*c*) *Chidambaram Chettiar* v. *Aiyasami Thevan*, 40 Mad. 585; *Mirza Hidayat Ati Beg* v. *Nga Kyaing*, 24 I. C. 721 (Bur.); *Mian Baksh* v. *Mussumat Bodhiya*, 50 All. 839; *Pethu* v. *Chidambara*, (1931) M. W. N. 90.

Sec. 121.

Maker and acceptor not to deny payee's capacity.

acknowledges, the capacity of the payee to receive the money, and if the note be made to be paid to the order of a specified person, he admits the capacity of that person to make the order for the payment of money. So, he cannot say in a suit by a holder in due course that the payee was an infant or that he was insane at the time of making the note or that the payee was a corporation without legal existence. The same rule applies in the case of an acceptor of a bill of exchange. By his act of acceptance, he admits everything essential to the validity of the existence of the negotiable instrument, and one of such essentials is the capacity of the payee named in the instrument to receive the money to be paid by an indorsement on the bill. (*a*) An acceptor is not allowed to show, when sued by a holder in due course, that the payee was an infant (*b*) or that the drawers of a bill drawn payable to their own order were infants; (*c*) and again the maker of a note is estopped from showing that the payee of a bill was an insolvent incapable of indorsing the instrument; (*d*) nor can the acceptor be allowed to plead that the payee was a married woman incapable of contracting. (*e*)

But the case may be different if the insolvency or the insanity happened after the making of the note or the indorsing of the bill: for in such cases, the indorsement by such a person is a mere nullity and can confer no title on the indorsee, and the acceptor is not justified in making payment to anyone whose title is affected by it. (*f*) The above rule applies even in the case, where the payee is a fictitious or non-existent person. But in that case, the holder has the option of treating the bill or note as payable to bearer and of proceeding accordingly.

Beyond the above admission as to the capacity of the payee, the maker of a note or the acceptor of a bill cannot be held to admit the genuineness of the indorsement of the payee, for he cannot be expected to know their handwriting; nor does an acceptance admit the agency to indorse which must be proved by the holder in order to recover against the acceptor or maker. (*g*)

For other estoppels against the acceptor, see sections 41, 42 and 120.

(*a*) *Cf.* B. of Ex. Act, sec. 55 (2).
(*b*) *Jones* v. *Darch*, (1817) 4 Price 300.
(*c*) *Taylor* v. *Croker*, (1802) 4 Esp. 187.
(*d*) *Drayton* v. *Dale*, (1823) 2 B & C. 293.
(*e*) *Smith* v. *Marsack*, (1848) 6 C. B. 486.
(*f*) Cf. *Alcock* v. *Alcock*, (1841) 3 M. & Gr. 268.
(*g*) Cf. *Robinson* v. *Yarrow*, (1817) 7 Taunt. 455.

Sec. 122.

The drawer may have been included in the section and a specific provision made for his case also; but probably it may be said that such a case has been already provided for in section 120, as the payee's capacity is one of the essentials to the validity of the instrument. (*a*)

Estoppel against denying signature or capacity of prior party.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

NOTES.

The indorser engages that the bill or note is a valid and subsisting obligation binding on all parties according to their position on the instrument; and he further represents to his indorsee that he has a good and valid title to the instrument and that he has a right to transfer the same.

Indorser cannot deny prior indorsements.

To sustain his title to the instrument, he admits the genuineness of the prior indorsements and he contracts that the signature of not only the drawer but also of the acceptor (if he has already accepted) and those of the indorsers through whom he derives his title are genuine. The indorsement admits not only the genuineness of the signatures but also the capacity of all prior parties. The indorser contracts that the original parties to the bill or note were competent to bind themselves whether as drawer, acceptor or maker, as also that the indorsers were competent to contract as indorsers and to indorse the instrument. The indorsee takes the bill or note chiefly on the credit of the indorser, and the indorser is not allowed to deny any fact that goes to make up his title and the right of recovery against the persons who become parties to the instrument. So, if the indorser's title was tainted by the forgery of an indorsement prior to his own, he is still bound on his indorsement to his indorsee, though he is not aware of the forgery committed. (*b*) This section does not however prevent the indorser from denying the validity of the instrument, for example, that the hundi was one payable to bearer on demand as offending section 26 of the Paper Currency Act, and hence invalid. (*c*)

(*a*) *Cf.* B. of Ex Act, sec. 55 (1) (b); *Collis* v. *Emett*, (1790) 1 H. Bl 313.

(*b*) *Bishen Chand* v. *Rajendro Singh*, 5 All. 302.

(*c*) *Alagappa Chetty* v. *Alagappa Chetty*, 44 Mad. 187; but see *Arunachalam* v. *Narayanan*, 42 Mad. 470, per Krishnan, J.

CHAPTER XIV.

OF CROSSED CHEQUES.

Cheque crossed generally.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed specially.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

NOTES.

One noteworthy feature, which distinguishes cheques from other bills of exchange is the usage of crossing cheques; a usage purely the result of commercial practice It is said that this practice originated at the clearing house when the clerks of the different bankers who did business there used to write across the cheques, the names of their employers, so as to enable the clearing house clerks to make up the accounts. (*a*) The purport of the crossing is to introduce a direction to the banker not to pay the cheque across the counter but to pay it only to a banker, who may be either the drawee banker, or a different one; and it thus affords a protection and safeguard to the owner of the cheque as by securing payment through a banker, it may easily be detected to whose use the money is received.

(*a*) *Bellamy* v. *Marjoribanks*, (1852) 7 Ex. 389, 402.

Sec. 125.

This object is attained, as stated above, by crossing, *i.e.*, by putting two transverse lines across the face of the cheque. Often, between the two lines, there may be the addition of words '& company' or any abbreviation thereof. With or without these words, the crossing is said to be 'general'. Sometimes, the crossing may go further and specify the bank, so that the holder must either have an account at that bank or negotiate the cheque to a person who has such an account. Such a crossing is called "Special."

The crossing of a cheque does not restrain its negotiability, so that a crossed bearer cheque may pass from hand to hand without any indorsement, while a crossed cheque payable to order may be negotiated by indorsement as in the case of cheques uncrossed. To destroy negotiability, *i.e.*, the property of transferability free from equity, additional words, *i.e.*, 'not negotiable' have to be added to the crossing. As to this see section 130.

It is noticed by Chalmers that of recent years, a practice has sprung up of drawing cheques with the words 'account payee' or 'account payee only.' Such a case is not provided for in the Bills of Exchange Act. This, however, does not restrain negotiability of the cheque (*a*), but is only intended to further protect the drawer against theft or loss. It is not an addition to the crossing (*b*) but is merely a direction to the receiving bank that the drawer desires to pay the particular cheque into the bank which keeps the account of the payee. The marking has no application to those who are merely clearing bankers, as it is not in their power to comply with this direction (*c*).

Crossing after issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(*a*) *National Bank* v. *Silke*, (1891) 1 Q. B. 435; *Akrokerri etc.* v. *Economic Bank*, (1904) 2 K.B. 465; *Underwood* v. *Bank of Liverpool*, (1924) 1 K. B. 775. (C.A.)

(*b*) *Akrokerri etc.* v. *Economic Bank*, (1904) 2 K. B. 465.

(*c*) *Importers Co.* v. *Westminster Bank*, (1927) 2 K. B. 297.

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection. **Sec. 125.**

NOTES.

Crossing by holder.

The English Act (*a*) from which this section is taken says that a lawful holder may cross a bill generally or specially, while this section uses the word 'holder' only. But under section 8 of this Act, there cannot be a holder who is not a lawful holder at the same time, and therefore the word 'lawful' was perhaps thought unnecessary by the framers of the Act. The corresponding section of the Bills of Exchange Act, *viz.*, section 77 also uses the word "holder" and not "lawful holder." The crossing of a bill is not an alteration which vitiates the bill in the hands of a holder. (*b*) It is not clear whether a drawer can cross a cheque before its issue or at the date of its issue, for the term 'holder' does not include the drawer of a cheque before issue. There is a specific provision on the point in the Bills of Exchange Act. (*c*)

Where a cheque is crossed generally, the holder may cross it specially by adding the name of the banker to the general crossing. If a cheque is crossed specially, the holder cannot convert it into a general crossing by striking out or obliterating the name of the banker. For it is expressly enacted by section 78 of the Bills of Exchange Act and impliedly by section 87 of the Indian Act, that a crossing is a material part of the cheque, and it will be a material alteration vitiating the paper, if the crossing is obliterated or except as authorised by the Act, added to, or altered. (*d*) But, adding the name of the banker to a general crossing is not a material alteration. (*e*) Under the common law, such crossing was not a material part of the cheque and so could be altered with impunity. The law was, however, altered by 21 and 22 Vict, Ch. 79 (1858). As to the effect of such an addition, see section 130 *post*.

Special crossing by banker.

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent for collection. (*f*) This is the only case where a second special crossing

---

(*a*) 39 & 40, Vict., ch. 81, sec. 5.
(*b*) Sec. 87 *ante*.
(*c*) B. of Ex. Act, sec. 77 (1).
(*d*) *Cf.* B. of Ex Act, sec. 78.
(*e*) Sec. 87 *ante*.
(*f*) *Akrokerri Mines* v. *Economic Bank*, (1904) 2 K. B. 465, 472.

Sec. 126. is allowed by the Act, and that can be done only for the purpose of collection, and that too by a banker.

There is a provision newly added in the Bills of Exchange Act (*a*) allowing the banker to whom an uncrossed cheque or a cheque crossed generally is sent for collection to cross it specially to himself. Such a provision was enacted to "protect the bank from possible fraud by its clerks." Under the Indian law, the banker cannot do so; but if he is a holder of the instrument, he can cross it specially to himself, that is to say, he must have an indorsement of the cheque in his favour. (*b*)

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

NOTES.

General and special crossing.

The section lays down the results of crossing as mentioned in sections 123 and 124. The object of such a crossing is enacted in the preamble to the Statute of 19 & 20, Victoria, chap. 25, thus :—" it would conduce to the ease of commerce, the security of property and the prevention of crimes, if drawers or holders of drafts on bankers payable to bearer, or order on demand, were enabled effectually to direct the payment of the same to be made only to, or through some banker." The crossing is thus a direction to the banker on whom the cheque is drawn not to pay it except through a banker when the crossing is general; and when the crossing is special, it is henceforth payable only through the banker mentioned, or through another banker to whom it is sent for collection by that banker. When a crossed cheque drawn on a branch is paid or collected by another branch or the head office, the payment cannot be said to be otherwise than through a bank. (*c*) For the effect of non-compliance with provisions of this section, see section 129.

(*a*) B. of Ex. Act, sec. 77 (6).

(*b*) See however, the observations of Lord Birkenhead, in *Sutters* v. *Briggs*, (1922) A. C. 1, 16-18.

(*c*) *Gordon* v. *Capital & Counties Bank*, (1902) 1 K. B. 242.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment of cheque crossed specially more than once.

NOTES.

This section prohibits payment of cheque crossed specially more than once, except where the second crossing is to a banker for the purpose of making him an agent for the collection on behalf of the bank whose name has been written across the cheque. From the imperative nature of this section, it follows that it is necessary, in all cases, to specify in the second special crossing, that the banker in whose favour it is made is an agent of the first banker for collection.

Second special crossing.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment in due course of crossed cheque.

NOTES.

If the banker on whom a crossed cheque is drawn has paid the same in due course, that is, according to the provisions of section 126, he can debit the drawer with the amount in his accounts with him. The banker cannot be charged for paying that amount either by the drawer or by any other person, even if the amount does not reach the true owner of the cheque. This section is enacted for the protection of the banker, and if he pays to another banker the amount due under the cheque, the drawer cannot complain of it. But, if the payment by the banker is out of due course, that is, contrary to section 10 or contrary to the provisions of section 126, the banker cannot charge the drawer

Payment in due course by banker.

Sec. 129.

with the amount, if it is not received by the true owner of the cheque. (*a*) The drawer or the true owner of the cheqne may recover the amount from the person who received the money, as under this section he has no title to the cheque.

Payment of crossed cheque out of due course.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

NOTES.

Payment out of due course.

Banker liable to true owner.

If the banker on whom a cheque is drawn pays the amount in contravention of the provisions of section 126, and the amount is not received by the true owner of the cheque, he cannot charge the drawer with the amount. (*b*) Under this section, he is further liable to compensate the true owner of the cheque for any damage sustained by him by reason of his (banker's) paying the amount in contravention of the provisions of section 126. Under the common law in England, (*c*) the fact of a banker paying the crossed cheque otherwise than through a banker was taken to be strong evidence of negligence on the part of the banker, rendering him responsible to his customer; but if the banker was able to prove his good faith, then he was not liable. Of course, if the crossing is not apparent by its being skilfully obliterated or otherwise altered, and if the banker pays in good faith, he will not be liable. (*d*) Where a crossed cheque drawn on the head office or a branch of a bank, is paid into another branch, and is paid or collected, in either case, the bank is protected, as the persons receiving the cheque and paying the same are certainly a bank. (*e*)

Ordinarily, the drawee of a cheque is not liable to the holder as there is no privity of contract between them, but this section enables the holder to maintain an action against the banker, if he acts con-

---

(*a*) Sec. 129 *post*.

(*b*) *Bobbett* v. *Pinkett*, (1876) 1 Ex. D. 368, 372.

(*c*) *Bellamy* v. *Marjoribanks*, (1852) 7 Ex. 389.

(*d*) Sec. 89 *ante*; B. of Ex. Act, sec. 79 : Proviso.

(*e*) *Gordon* v. *Capital & Counties Bank*, (1902) 1 K. B. 242 at 274.

trary to the provisions of section 126 *ante*. That section casts a statutory duty on the banker, and so he is liable for the breach of such duty.

A crossed cheque payable to order was stolen from the payee, and his indorsement was forged on it. The cheque was paid in contravention of the crossing to a person who gave value in good faith. It was held in England (1) that the banker had no right to debit the drawer's account with the amount of the cheque, (2) that the payee who lost the cheque might recover the amount from the person who received it, and (3) that if the drawer had allowed his accounts to be debited with the amount of the cheque, he could maintain an action against the person who received the amount from the banker. (*a*) In the case mentioned above, if the cheque had been made payable to bearer and was not crossed with the words 'not negotiable,' the payee would have had no remedy apart from that given by the Statute in England. He ceased to be the holder as soon as some other person acquired a *bona fide* title to the cheque, and that person became the holder thereafter, from whom the payee could not recover the amount of the cheque. (*b*) But, under section 79, cl. (2) of the Bills of Exchange Act, he has a remedy against the banker who pays the cheque in contravention of the crossing. But, where A's cashier presented at B's bank, cheques drawn on B in favour of A and crossed generally, and in exchange he was handed over cheques for the same amounts drawn by B upon other banks and crossed generally, and the cashier who was held out by A as having authority to deal with the cheques in this way, fraudulently paid the cheques handed to him by B, to his own banking account and mis-appropriated the proceeds, it was held that he was not entitled to recover damages, since he was estopped from denying the authority of the cashier to receive payment in that manner. (*c*) Though under the Indian law, a holder does not cease to be one even after he loses the instrument, he cannot recover the amount from a person who subsequently acquires the cheque *bona fide* and for value, and his remedy lies only against the banker who paid the cheque contrary to the provisions of section 126. As already remarked, the true owner may waive his remedy against the maker, and may proceed against the person who having no title to the cheque received the amount due under it. (*d*)

(*a*) *Bobbett* v. *Pinkett*, (1876) 1 Ex. D. 368, 372.

(*b*) *Smith* v. *Union Bank*, (1875) L. R. 1 Q. B. D. 31; Chalmers (10th Edn.) 308.

(*c*) *Meyer & Co.* v. *Sze Hai Tong Banking Co*, (1913) A.C. 847; *Ahmed Moola Dawood* v. *Periannan Chetty Firm*, 3 Bur. L.J. 22.

(*d*) *Ogden* v. *Benas*, (1874) L.R. 9 C.P. 513.

Sec. 130.

Cheque bearing "not negotiable."

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

NOTES.

This section corresponds to the first part of section 12 of the Statute of 39 & 40 Vict., ch. 18. Under the Indian law and the English law before the Bills of Exchange Act, it was always competent to a person to draw a non-transferable cheque by simply omitting the words "order or bearer" in the body of the instrument. As already noted under section 13, the absence of such words do not now under the English or Indian law restrain negotiation; and so the only way by which a person can draw a non-negotiable cheque at present is, by crossing it 'not negotiable.' A cheque crossed 'not negotiable' is still transferable, but the transfer is not attended by the same important consequences as in an ordinary negotiation of a negotiable instrument. If the transferor has a good title, the transferee is entitled to receive payment; but if the title of the transferor is defective, the transferee is affected by such defect and is not protected in the same way as an ordinary holder for value. In other words, the cheque is deprived of one of the two attributes of negotiability. *viz*, transferability free from equities; but is left with the other unaffected, *viz.*, the transferability by delivery or indorsement. In fact, on a cheque crossed 'not negotiable' there cannot be a holder in due course, but only a 'holder.' Thus, where H by false pretences obtained from G. W. a cheque crossed "& Co" and 'not negotiable' and took it to a bank, who paid it, it was held in a suit by G.W. against the bank for the conversion of the cheque, that the cheque having been obtained by the fraud of H, H had no title to the cheque, and could not give to the bank any title to the cheque or the money, and that the bank was liable for the amount of the cheque. (*a*) In the above case, Earl Halsbury, L.C. says: "It is very important that every one should know that people who take a cheque which is upon its face "not negotiable" and treat it as a negotiable security, must recognise the fact that if they do so, they take the risk of the person for

(*a*) *Great Western Railway Co.* v. *London & County Banking Co.*, (1901) A. C. 414; *Fisher* v. *Roberts*, (1890) 6 T. L. R. 354.

whom they negotiate it, having no title to it. In this case, it cannot be pretended that Huggins had any title to it at all. I do not understand what additional security is supposed to be given to a cheque by putting the words "not negotiable" upon it, if the fact of its being negotiated can give a title to any one. The supposed distinction between the title to the cheque and the title to the money obtained or represented by it seems to me to be absolutely illusory. The language of the Statute seems to me to be clear enough. It would be absolutely defeated by holding that a fraudulent holder of the cheque could give a title either to the cheque or to the money." In the same case, Lord Brampton speaking of the corresponding provisions of the Bills of Exchange Act, said: 'The object of section 81 is obvious. It is to afford to the drawer or to the holder of a cheque who is desirous of transmitting it to another person, as much protection as can be reasonably afforded to it against dishonesty or accidental miscarriage in course of its transit, if he will only take the precaution to cross it with the addition of the words "not negotiable," so as to make it difficult to get such cheques so crossed cashed, until it reaches the destination.' (*a*)

Non-liability of banker receiving payment of cheque.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

Explanation.—A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

NOTES.

History of the section.

This section corresponds to the second part of section 12 of the Statute of 39 & 40 Vict. ch. 81. Under that Statute, the two parts were

(*a*) *Great Western Railway Co.* v. *London & County Banking Co.*, (1901) A. C. 414, 422.

Sec. 131. connected by the word 'but' and formed only one section. The reason of the division seems to be on account of the decision of Grove, J. in *Matthiessen* v. *The London & County Bank*, (*a*) where he said: "The first part applies to a cheque which has a limit to its negotiability by the use of the words on it 'not negotiable.' The second part omits those words, and gives a protection to bankers with respect to cheques crossed generally or specially, and without saying anything about the words 'not negotiable.' Had those two parts been different sections, and, instead of the word 'but,' had the figure 13 been there, making the second branch of it as section 13, it does not seem to me possible that any one could have mistaken the meaning or application of the words in that last part." The same division has been carried out in the Bills of Exchange Act, 1882. (See sections 81 and 82.)

The 'explanation' to this section was added by section 2 of the Negotiable Instruments (Amendment) Act XVIII of 1922, and it is merely a reproduction of section 1 of the Bills of Exchange (Crossed Cheques) Act, 1906, (6 Edw. 7 ch. 17,) which was enacted for neutralising the actual or supposed effect of the *Gordon's case*, (*b*) by providing that mere crediting the cheque as cash, shall not deprive the banker of the protection afforded by the main section.

The position of bankers in general with regard to payment or collection of cheques before the above enactments was, that they stood unprotected against the risk of a signature on a cheque being forged and if, on the strength of a forged indorsement, they dealt with a cheque in a manner contrary to the rights of the true owner, they were liable in an action by him. Lindley, J., said speaking of section 12 of the English Statute of 1876: (*c*) "Take the position of a collecting bank. A collecting bank receives from its customers crossed cheques: they must collect them or leave them alone; practically, of course, they do collect them. Then it comes to this,—What is the consequence if they do collect, and the customer who sends the cheque to them happens to have a bad title? It is, to my mind, a little hard in any case, that a banker who merely collects the money for his customer should be liable for the money. I do not mean to say that, as the law stood before, the banker was not liable; but it is little hard; and it appeared to me to be only reasonable, at all events, that the Legislature should relieve bankers from some of the consequences against which no amount of

---

(*a*) (1879) L. R. 5 C. P. D. 7.

(*b*) *Capital and Counties Bank* v. *Gordon*, (1903) A. C. 240.

(*c*) *Matthiessen* v. *The London and County Bank*, (1879) L.R. 5 C.P.D. 7, 16.

foresight could possibly guard. When we look at this 12th section, it is obvious that that is what is meant."

Sec. 131.

Reason.

While sections 82 and 128 *ante* give protection to a banker who pays a crossed cheque in due course, the present section protects a banker, who in good faith and without negligence receives payment for a customer. The Legislature having given a facility to the public by enabling them to make use of crossed cheques as a means of payment with greater security, and bankers having been invited to receive crossed cheques as agents for collection, it is but necessary that they should be protected in discharging the duty which they are thus invited to undertake.

Conditions.

Even this section, does not provide an absolute immunity to the collecting banker, and unless he can bring himself within the conditions formulated by this section, he is left with his Common Law liability for conversion or for money had and received, in the event of the person from whom he takes the cheque having no title or defective title. The conditions are: (1) that the banker should act in good faith and without negligence in receiving payment *i.e.*, in the process of collection, (2) that the banker should receive payment for a customer, *i.e.*, act as mere agent in the collection of the cheque, and not on his own account as holder, (3) that the person for whom the banker acts must be his customer, and (4) that the cheque should be one crossed generally or specially to himself.

Duty to take care, for the benefit of the true owner.

The first and essential condition, that is, the duty to take care, is purely one imposed by the Statute on the banker for the benefit of the true owner, as between whom there is no contractual relation giving rise to a duty. It is the price which the banker pays for the protection afforded by the Statute. It is therefore from the standpoint of the true owner, that the question of good faith and absence of negligence has to be considered. (*a*) It is no excuse to say that it is probable that the exercise of care would not have enabled him to discover the defective title of the customer, for any person who does not exercise reasonable care is outside the section altogether. (*b*)

In receiving payment.

This duty is not merely limited to the act of receiving the money, but to the whole transaction from the taking of the cheque to the receipt and disposition of the money. If it is to be restricted to actual receipt only, the protection afforded to the banker must similar-

(*a*) *Hannan's Lake View Central, Ltd.* v. *Armstrong & Co.*, (1900) 5 Com. Cas. 188, 191; 57 M.L.J. (Sh. N.) 49.

(*b*) *Savory & Co.* v. *Lloyd's Bank*, (1932) 2 K. B. 122.

Sec. 131.

ly be limited, and will become nugatory ; for, he will then be liable for conversion for the taking of the cheque or for such other preliminary act. (*a*) At the same time, the negligence must relate to the collection of the cheque and not to any antecedent act, such as opening an account, though circumstances connected with it may shed light on the question of negligence. The question should in strictness be determined separately with regard to the collection of each cheque. (*b*)

Standard of care.

The standard of care required of a banker is what a reasonable business man would do or not do, having regard to the surrounding circumstances. It thus depends upon the ordinary practice of bankers and not of individuals ; but not on a practice which has inherent and obvious defects. (*c*) The question of negligence is necessarily a question of fact, and the test is " whether the transaction of paying in any given cheque, coupled with the circumstances, antecedent and present, is so out of the ordinary course that it ought to arouse doubts in the banker's mind and cause him to make inquiry ". (*d*)

Payment to account of agent etc.

By far the greater number of cases dealing with the question of negligence arises where a person places for collection into his private account, cheques which *ex facie* do not belong to him, but to his employer or his principal or to a firm or company, to which he stands in a fiduciary relationship, such as a secretary, director or manager. Thus, where a manager of the plaintiff, a firm of insurance brokers, having authority to sign *per pro* for its business, drew cheques so signed, and fraudulently paid them into his own account with the defendants, who collected the same for him for a number of years, it was held that so far as the earlier cheques were concerned, the defendants were negligent in that they had notice of the agency and it was so out of the usual course of business that an agent should draw on his principal's account and pay them into his own private account. But, as on the facts, it was found that those transactions were adopted by the plaintiff, the bank were relieved of their liability ; as regards the later ones, the defendants were held not to be negligent as the course of dealing must have led them to believe that the series of transactions were known to the plaintiff and therefore there could be no harm in collecting those cheques. (*e*) Recently, a case arose in Madras, (*f*) under circumstances similar to the above. Cheques indors-

(*a*) *Capital and Counties Bank* v. *Gordon*, (1903) A.C. 240.

(*b*) *Commissioners of Taxation* v. *English &c. Bank*, (1920) A.C. 683, 688.

(*c*) *Savory & Co.* v. *Lloyds Bank*, (1932) 2 K. B. 122.

(*d*) *Commissioners of Taxation* v. *English &c. Bank*, (1920) A.C. 683; *Underwood* v. *Bank of Liverpool*, (1924) 1 K. B. 775; *Lloyds Bank* v. *Chartered Bank*, (1929) 1 K.B. 40; *Robinson* v. *Central Bank of India*, 9 Rang. 585.

(*e*) *Morison* v. *London County and Westminster Bank*, (1914) 3 K. B. 356;

(*f*) 57 M. L. J. (Sh. N.) 49.

ed by a person, as agent, were paid by him with the knowledge of his principal into his own account with his bank, as, at that time, the principal had no account therein. Though afterwards the principal opened an account with the bank, the agent continued to pay similar cheques into his private account. In an action by the principal, it was held that for an agent to indorse as agent, cheques of his principal and then pay them into his own account, is a most suspicious proceeding putting the bank on notice, and an omission to make inquiry of or to get authority from the principal and to remain content with the reply of the suspected agent is not reasonable but negligent. As, however, the principal knew of this conduct of the agent and did not disapprove of the same, the bank was held not liable just as in the *Morison's case* (*a*) noted above.

These cases illustrate on the one hand the banker's duty to take care and on the other, the protection afforded to him by any conduct of the owner of the cheque if it misleads him. It is imposible to lay down rules governing all cases, but some guidance may be obtained from the cases decided, some of which are noted below :

Where a cheque drawn by the plaintiffs payable to " F. S. H. & others or bearer " and crossed " account payee," is sent to their solicitor who paid it to his private account with the defendants, his bankers, it was held that the latter were put on inquiry, and their collection without investigation was negligent. (*b*) Similarly, where a sole director of a company pays into his own account with the defendants, cheques of the company for collection, the defendants, if they collect without inquiry, are not entitled to be protected. (*c*) On the same principle, it has been decided that, where the chief accountant of the plaintiff's branch in Bombay, authorised to draw cheques on their bankers, fraudulently drew a number of cheques in favour of his own bankers, the defendants, who collected and credited the proceeds to his account, were negligent. In this case, section 131 of this Act was specifically referred to, and it was decided by the Court of Appeal that the defendants could not rely upon it, because they were put on inquiry by the facts, that large sums of money which could not be attributable to his salary, were being transferred to them, and that this was done by cheques signed by one, who to their knowledge was an officer of the plaintiffs. (*d*)

(*a*) *Morison* v. *London County and Westminster Bank*, (1914) 3 K.B. 356.

(*b*) *House Property Co.* v. *London &c. Bank*, (1915) 84 L. J. K. B. 1846.

(*c*) *Underwood* v. *Bank of Liverpool*, (1924) 1 K. B. 775.

(*d*) *Lloyds Bank* v. *Chartered Bank*, (1929) 1 K. B. 40.

Sec. 131.

Again, where a cheque payable to "the Officer in Charge, Estate's Office, Canadian Overseers Military Forces" was paid by a sergeant, whose duty was to take such cheques to the officer for indorsement, into his own private account after getting the indorsement of the official, it was held that the bank was guilty of negligence. (*a*) In like manner, where a person, known to the defendant bank as a clerk of the plaintiff, presented a cheque drawn by the plaintiff in favour of the Official of the Corporation of Rangoon for taxes due, with an indorsement consisting of a rubber stamp and a scroll purporting to be the name of the official, for collection and payment into an account of a minor of whom the clerk was the guardian, and where the bank collected and credited the proceeds to the account of the minor, the bank was held not protected. (*b*) So also, it is negligence to collect a cheque payable to a partnership to the credit of one of the partners; (*c*) or to disregard the notice imputable to the banker by *per pro* indorsement. (*d*)

On the other hand, the case of *Corporation Agencies Ltd.* v. *Home Bank*, (*e*) strikes a different note. There, a company authorised by its bye-law one of its directors acting along with the secretary-treasurer to draw cheques on its bank; a series of cheques so drawn in his own favour were paid by a director into his own account with the defendants, who collected them and credited his account. In order to enable the company's bank to meet these cheques, the director paid into the company's account several cheques, not belonging to the company, drawn on various other banks. In an action by the company against the collecting bank, it was held that there was nothing in the forms of the cheques themselves to show that there was any irregularity or fraud so as to put them on inquiry, and that therefore there was no negligence. The plaintiff was also non-suited on the ground that it was not put to any loss, as by a process of 'kiting,'* the director only drew money, which he had himself put into the company's account. Said Lord Wrenbury: "Suppose the bank had asked, for what is this cheque given, would he have been bound to answer? It might have been for salary or on any other account. The defendant bank

---

(*a*) *Ross* v. *London &c. Bank*, (1919) 1 K. B. 678.

(*b*) *Robinson* v. *Central Bank of India*, 9 Rang. 585.

(*c*) *Bevan* v. *National Bank, Ltd.*, (1906) 23 T. L. R. 65.

(*d*) *Bissell* v. *Fox & Co.*, (1884) 51 L. T. 663; *Crumplin* v. *London Joint Stock Bank, Ltd.*, (1913) 109 L. T. 856.

(*e*) (1927) A. C. 318.

* Kiting is a device adopted in Canada and not unknown in this country even, whereby a person obtains the use of money during the process of a cheque passing through one bank or through a clearing house to another, and perhaps through many more, *i.e.*, getting credit for the time it takes to clear a cheque from one bank to another.

had no duty to inquire as to the obligation in respect of which it was given." A somewhat similar reasoning was adopted in a later case, (*a*) which arose under the following circumstances, though the above case was not therein referred to.

Certain paper merchants of London drew cheques on their bank in favour of manufacturers in Germany and sent them over to their own agents, a man named Schultze, with instructions to deliver them to the payees. He, however, stole the cheques, forged the indorsements of the payees in his own favour and added his name underneath, so that he was on the face of the cheques entitled to the moneys thereunder. These cheques were paid by him into his own bank in Germany, who sent them on to the defendants' bank for collection, which they did. In an action by the merchants, it was held that there was nothing on the cheques to put the defendants on inquiry, and that they had discharged the onus of negativing negligence. It was further pointed out that the words "account payee" in some of the cheques were not a direction to the defendants as a collecting bank, and that there was no negligence in discharging the direction.

In 1931, the fraud of a solicitor employed by the executors of a deceased person gave rise to a number of cases, in which conflicting decisions were given. An interest warrant in favour of one of the executors, crossed "& Co., not negotiable. Account H. T. deceased" was handed into the solicitors' office and one of them paid it into his private account. There was some inquiry by the bank of the solicitor who, however, put them off with a false story. It was held by Findlay, J., that there was no negligence. (*b*) But, in the Court of Appeal, the judges in dealing with a case relating to another transaction observed that they were prepared to hold that there was negligence on the facts of this case. (*c*) In the other transaction, the solicitor was entrusted with a cheque payable to certain stock-brokers with a view to invest the same in war—stocks. The solicitor manipulated the body of the cheque and indorsing it in his own favour, paid the same into a bank to the account of a company of which he was the chairman. The money was collected and paid over. Two actions were laid, one against the bank on which the cheque was drawn and the other against the collecting bank. The latter was tried by Findlay, J., who held that there was no negligence and that the bank was entitled to protection. The case against the paying bank came before Wright, J., who

(*a*) *Importers Co.*, v. *Westminster Bank*, (1927) 2 K. B. 297.

(*b*) *Slingsby* v. *Westminster Bank*, (1931) 1 K. B. 173.

(*c*) *Slingsby* v. *District Bank*, (1932) 1 K. B. 544, 556.

Sec. 131.

decided *inter alia* that the bank was negligent and that the plaintiffs were entitled to recover, notwithstanding the fact that they had drawn the cheque in such a way, leaving spaces, as to be utilised by the fraudulent solicitor to make some sort of title to the cheque. (*a*) When this case went up to the Court of Appeal, the judges there confirmed the judgment of Wright, J., and disapproved that of Findlay, J. (*b*) It is to be noticed that in none of these cases is any reference made to the decision of the Judicial Committee in the *Corporation Agencies' case.* (*c*) Nor is this case considered in the recent decision of the House of Lords in *Midland Bank* v. *Reckitt* (*d*) which contains a critical review of the law as to banker's duty to customers. The case arose out of the dishonest conduct of an apparently respectable solicitor who was employed as an agent by a person who went abroad, leaving him a power of attorney to sign cheques on his account 'without restrictions.' He drew numerous cheques on the principal's bank and used one of them to pay an instalment of the purchase money of a car. The principal coming to know of it, sued the payee, and it was held that he was bound to repay the same on the ground that when he got a cheque signed by a person as agent in payment of his own private debt, he ought to have made inquiries. (*e*) He, being pressed by his bank to clear his overdraft, utilised a number of other cheques, for the purpose of keeping his private account with his bank in credit. The bank was sued for the amount of these cheques, and it was held following the tests laid down in the previous case, that it was not entitled to the protection, because it did not act without negligence. In fact, the form of the cheque was such that it gave the bank, notice that the money was not the money of the customer, and when such money was being utilised for his own purposes, the duty of the bank was clear, and by not making due enquiries, the bank was negligent. In the case, however, of two of those cheques which were drawn not in favour of himself or of his own firm, but in favour of a fictitious person in one case and in favour of a third person in another, the House of Lords, agreeing with the Court of Appeal came to the conclusion that the bank was protected.

It only remains to notice how in itself an unobjectionable and commercially useful system works sometimes to the disadvantage of the collecting bank. The bank had adopted the common system of receiving cheques for the account of their customer at any of its bran-

(*a*) *Slingsby* v. *District Bank,* (1931) 2 K.B. 588.

(*b*) *Slingsby* v. *District Bank,* (1932) 1 K.B. 544.

(*c*) (1927) A.C. 318.

(*d*) (1932) 48 T.L.R. 271 (H.L.).

(*e*) *Reckitt* v. *Barnett,* (1929) A.C. 176.

ches, though he may not have an account at that branch. This was taken advantage of, for perpetrating fraud by two clerks of a firm of stock-brokers who used to pay their jobbers by means of crossed bearer cheques. The clerks stole a number of cheques and one of the clerks paid some into a branch of the defendant-bank at which he had no account, to be credited to his account at another branch, at which place he was described as a stock-brokers' clerk, but no inquiry was made as to the name of his employers. The other clerk paid the other cheques into the head-office into his wife's account, had by her at some branch, where again no question had been asked as to the occupation of her husband. The cheques, in accordance with the practice, were not sent to the branch banks at which the accounts were had, but sent to the clearing house direct for collection. On these facts, it was held that there was negligence on the part of the bank not only in the fact that there were not sufficient inquiries made in opening the account, but in that the branch banks receiving the cheques had not passed on sufficient information as to who was the drawer or payee of the cheque to the customer's branch which could easily have been done, in which case, there would have been sufficient notice for inquiry and prevention of fraud. (*a*)

The mere fact that a customer is a stock-broker or fills a position of having to deal with other people's money, does not affect the collecting banker with notice. (*b*) But, the fact that a cheque for a large amount was paid in by a person who had generally a small account, may call for inquiry. (*c*)

'Account payee.'

As has been noticed already, some cheques are marked " account payee "; when such a cheque is received by a banker to the account of a person other than that indicated, it may be said at once, he acts negligently, if no inquiry is made by him and is therefore disentitled to protection. (*d*) But, this principle was not applied to the case where ' the customer was a foreign bank ', and " the account payee " referred to the foreign bank's customer, as to whom it was obviously impossible for the English bank to know or find out anything or to comply with the direction in the cheque. (*e*) Similarly, a signature ' per pro ' is

---

(*a*) *Savory & Co.* v. *Lloyds Bank*, (1932) 2 K. B. 122.

(*b*) *Thomson* v. *Clydesdale Bank*, (1893) A. C. 282.

(*c*) *Commissioners of Taxation* v. *English &c. Bank*, (1920) A. C. 683, 690; see *Savory & Co.* v. *Lloyds Bank*, (1932) 2 K. B. 122.

(*d*) *Akrokerri* v. *Economic Bank*, (1904) K. B. 465; *Bevan* v. *National Bank Ltd.*, (1906) 23 T. L. R. 65; *Morison's Case*, (1914) 3 K. B. 356; *House Property Co.* v. *London County & Westminster Bank*, (1915) 84 L. J. K. B. 1846. See Paget, p. 259.

(*e*) *Importers Co.*, v. *Westminster Bank*, (1927) 2 K. B. 297.

Sec. 131. notice that the agent has limited authority and is a very important element in considering the question of negligence. (*a*)

Of the other instances of negligence, some have already been noticed in the notes to section 85, *ante*. The collecting banker is bound to verify the regularity of the indorsements, (*b*) and generally to act in accordance with the directions conveyed by the form of the cheque.

Circumstances may, however, exist which will lead to the conclusion that the negligence of the banker has been condoned or the transactions in which negligence is charged are adopted by the true owner. In such cases, the banker can still claim protection. (*c*)

The section does not throw any light as to whether the protection afforded by this section to the banker is available even in a case where the drawer's signature is forged. Though the principle of the decision in *Price* v. *Neal* (*d*) that an acceptor of a bill of exchange is estopped from denying the drawer's signature is not applicable in India, (vide 'explanation' to section 117 of the Evidence Act), it is not inapplicable in this country in the case of cheques; for, a banker must know his customer's signature and cannot, therefore, debit his account with payments made on forged cheques. Therefore, if a cheque comes in the ordinary course of dealing through one banker to another for payment and the latter pays the same and charges it to its customer, the drawee bank must be taken to have paid the amount, relying upon its knowledge of the customer's signature rather than any warranty implied in the presentation of the cheque by the collecting bank. Thus, in a case in Canada, where a clerk in the employ of the Government, forged the signatures of the officers, to cheques on the Bank of Montreal and paid them to his own credit in other banks, who collected and paid the money to him, and in an action by the Government against the Bank of Montreal, the latter caused the collecting banks to be added as third parties, it was held that the Montreal Bank was not entitled to recover from the collecting banks, though it was made liable to pay to the Government. (*e*) It appears from the note in Falconbridge, that leave to appeal against this decision was refused by the Privy Council. (*f*) It follows, therefore, that the collecting bank is protected under this section even if the cheque is one where the drawer's signature is forged.

(*a*) *Midland Bank* v. *Reckitt*, (1932) 48 T. L. R. 271; *Morison's case*, (1914) 3 K. B. 356; *Crumplin* v. *London Joint Stock Bank*, (1913) 109 L. T. 856.

(*b*) *Bavins* v. *London & South Western Bank*, (1900) 1 Q. B. 270.

(*c*) *Morison's case*, (1914) 3 K. B. 356; 57 M. L. J. (Sh. N.) 49; but see *Bank of Montreal* v. *Dominion Gresham etc. Co.*, (1930) A. C. 659, 666; *Savory & Co.* v. *Lloyds Bank*, (1932) 2 K. B. 122.

(*d*) (1762) 3 Burr. 1354.

(*e*) *Bank of Montreal* v. *The King*, (1907) 38 Can. S. C. R. 258.

(*f*) Falconbridge on 'Banking & Bills of Exchange,' p. 592.

Sec. 131.

"For customer."

The section does not cover and was not intended to cover the case of a banker making himself the indorsee of the cheque. If the banker chooses at once to treat the cheque as cashed between himself and his customer and afterwards he receives payment from the banker on whom it is drawn, he does so for himself and not for the customer. (*a*) If, however, the cheque is taken for collection on the understanding that there shall be no credit till the cheque is cashed, the section no doubt applies. The true meaning of the section on this point is stated as follows by Lindley, J., in *Matthiessen* v. *London and County Bank*: (*b*) "When the bank has got the proceeds, the true owner says to the bank, "hand me those proceeds." The Legislature says, 'No, if you, the banker, have collected only the proceeds of the cheque for your customer, we will not render you responsible for the proceeds, when you have dealt with the cheque in the only way in which you could deal with it. If you have done anything more, if you have applied it to your own use, that is another matter ; but if you have simply collected it through the clearing house in the only way in which a banker collects a cheque and that is all you have done, the true owner shall look through you to your customer, and he, not you, must be responsible to the true owner for the proceeds."

The mere fact of placing the money in the customer's account with the result that a portion of it would, if the balance were struck, go towards clearing-off the overdraft, cannot render the bank liable. But if the bank credited the customer with the amount of the cheques, as soon as they were handed in to his account, and allowed him to draw against the amounts so credited, before the cheques were cleared, then the natural inference would be that they were collecting the money not merely for their customers but chiefly for themselves, and hence they would not be protected. In such cases, they are not merely a conduit pipe for conveying the cheque to the bank on which it is drawn and receiving the money from that bank for its customer. (*c*)

Present Eng. law.

This decision of the House of Lords was said to have worked great hardship on the bankers in their business, so that an 'Expla-

---

(*a*) See Lindley, J., in *Mathiessen* v. *London & County Bank*, (1879) 5 C. P. D. 7, 16 ; *Bissell* v. *Fox & Co*, (1884) 51 L. T. N. S. 663, 666, Denman, J. ; *M'lean* v. *Clydesdale Bank*, (1883) 9 A. C. 95, 111; *Gordon* v. *London and Midland Bank*, (1902) 1 K. B. 242, 270 ; see *Clarke* v. *London & County Banking Co.*, (1897), 1 Q. B. 552.

(*b*) (1879) 5 C. P. D. 7,16.

(*c*) *Capital Counties Bank Ltd.* v. *Gordon*, (1903) A. C. 240, affirming (1902) 1 K. B. 242 (C.A); see *Gaden* v. *Newfoundland Savings Bank*, (1899) A.C. 281.

Sec. 131. nation' has been added to section 82 of the Bills of Exchange Act which is in the same terms as the 'Explanation' to this section newly added by Act XVIII of 1922. (*a*)

The 'explanation' to the section makes it clear that the fact that the bank gives credit to the customer as soon as the cheque is indorsed by him and paid into the bank is not decisive of the question but that it depends on the other facts in the case. Thus, where a Bank gave provisional credit to the customer but reversed the same on finding that the cheques were not honoured, it was held that it was consistent only with their receiving the cheques as agents for collection. (*b*) But, where the customer had overdrawn his account and the cheque is paid towards the account, and it was found that the intention was to extinguish the overdrawn account to that extent, it was held the bank were holders for value of the cheque. (*c*) Where there were no such outstanding facts, it has been held that the mere crediting in of the amounts of the cheque in the acccount of the customer, will not make them owners thereof but that they must be treated as mere agents for collection, though it is observed in the same case that if the credit is given not only in the books of the bank but also in the pass-book issued to the customer from time to time, the decision may be against protecting the bank. (*d*) Thus, it may be said, that to make the section applicable there must be a contract, express or implied, entitling the customer to draw against the amount of the cheque, before it is cleared. But, the existence of an overdraft, for which the banker would have a lien over the cheques paid in, even before they are collected, thus making him a holder for value, does not deprive him of the protection, for he still receives the payment for his customer. (*e*) The expression 'receives payment' applies not only to a receiving bank but also to a collecting bank. (*f*).

Who is a customer ?

Again, it is to be noticed that the protection is given only in cases where the bank acts for its customer. Who is a customer, is a vexed question. Broadly speaking, a customer is a person who has the use and habit of resorting to the same place or person, to do business; therefore, a stranger who goes into a bank to get a cheque collected

---

(*a*) *Cf.* Bills of Exchange (Crossed Cheques) Act, (1906) 6 Edw. VII, Ch. 17, s. 1.

(*b*) *Alliance Bank of Simla,* In re, 40 C.L.J. 223.

(*c*) *M'lean* v. *Clydesdale Banking Co.,* (1883) 9 A.C. 95, 115; *A.L. Underwood, Ltd.* v. *Barclays Bank,* (1924) 1 K. B. 799.

(*d*) In re *Farrows Bank,* (1923) 1 Ch. 41, 49; see *Alliance Bank of Simla,* In re, 40 C.L J. 223.

(*e*) *Great Western Ry.* v. *London & County Banking Co.,* (1900) 2 Q.B. 464, on appeal, (1901) A.C. 414, 424; *Sutters* v. *Briggs,* (1922) 1 A. C. 1, 17.

(*f*) *Importers Company* v. *Westminster Bank,* (1927) 2 K.B. 297 (C.A.).

is not a customer of the bank. (*a*) The word involves something of use or habit. The fact that a person had been in the use of cashing cheques across the counter for some years, cannot make him a customer. (*b*) There can be no comprehensive definition of the word 'customer.' Lord Davey said: "I think there must be some sort of account, either a deposit or current account or some similar relation to make a man a customer of a bank"; (*c*) but, Lord Brampton would have it that, "it is not necessary to say that the keeping of an ordinary banking account is essential to constitute a person a customer of a bank, for if it were shown that the cheques were habitually lodged with a bank for presentation on behalf of the person lodging them and that, when honoured, the amount was credited and paid out to such person, whether with or without any profit to the bank for so presenting them, I would not say that such transactions might not constitute such person a customer within the meaning of the 82nd section; indeed I think I would." (*d*) In a more recent case, a customer has been defined as a person whose money has been accepted on the footing that the bankers undertake to honour cheques up to the amount standing to his credit, irrespective of his connection being of short or long standing. The contrast is not between a habitual and a newcomer but one for whom the bank performs casual service, such as, cashing a cheque for a person introduced by a customer and a person who has an account of his own at the bank. (*e*) The word 'customer' is not limited to a private customer of the bank but also applies to another bank for whom the bank, which relies on the protection of the section, collects the cheque. (*f*) A customer does not cease to be one because his account is over-drawn. (*g*) Though the banker is protected and the true owner may not recover as against him, he (the true owner) has always his remedy against the person who is in possession of the money. (*h*)

Protection, only when cheque crossed.

Further, the section applies only to cheques which are crossed before they came into the banker's possession, and the bankers cannot by crossing them claim the protection of the section. Of course, section 125 allows such a crossing to be done by the banker, but that

(*a*) *Matthews* v. *Brown & Co.*, (1894) 63 L. J. Q. B. 494; *Lacave* v. *Credit, Lyonnais*, (1897) 1 Q. B. 148, 155; but see *Ladbroke & Co.* v. *Todd*, (1914) 30 T. L. R. 432.

(*b*) *Great Western Ry. Co.* v. *London and County Banking Co.*, (1901) A. C. 414.

(*c*) *Ibid*, (1901) A.C. 414, 420.

(*d*) *Ibid*, at 422.

(*e*) *Commissioners of Taxation* v. *English, Scottish and Australian Bank*, (1920) A. C. 683.

(*f*) *Importers Co.* v. *Westminster Bank*, (1927) 2 K. B. 297 (C.A.).

(*g*) *Clarke* v. *London & County Banking Co.*, (1897) 1 Q. B. 552.

(*h*) *Ogden* v. *Benas*, (1874) L. R. 9 C. P. 513.

Sec. 131. is a facility given for the purpose of affording additional protection during the process of collection after the crossing of the cheque. With reference to cheques not crossed at the time the bankers got it, it was said : "They (the bankers) took the cheques which were then not within the section and dealt with them in such a manner as, according to the authorities, constitute a conversion of them to their own use. They cannot purge that conversion and put themselves in any better position, by subsequently crossing the cheques themselves." (*a*)

(*a*) *Gordon* v. *London City and County Midland Bank*, (1902) 1 K.B. 242, 272, on appeal (1903) A.C. 240.

CHAPTER XV.

OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished. **Set of bills.**

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

NOTES.

Bill in sets.

Bills in sets are usually associated with foreign bills; inland bills are rarely drawn in sets, though if they are so drawn, the provision of the section will apply to them as well. Foreign bills of exchange are generally drawn in sets, the object being to avoid delay and inconvenience which may result from loss or miscarriage, and to facilitate and expedite its transmission for acceptance and for payment. Each of these parts is numbered and contains a reference to the other parts. (*a*) All these several parts are delivered together to the payee, except perhaps one which is usually transmitted to the drawee for acceptance. The facility which drawing a bill in sets affords for its presentment has been held to accelerate the time within which a bill payable after sight ought to be presented for acceptance. (*b*) All these parts together form one set, and in law the whole set constitutes but one bill, (*c*) so much so it has been held that an agreement under seal to deliver up certain bills of exchange was an agreement

(*a*) Cf. *Holdsworth* v. *Hunter*, (1830) 4 M. & W. 721.
10 B. & C. 449, 454, 455.
(*b*) *Ibid*; *Straker* v. *Graham* (1839)
(*c*) *Societe Generale* v. *Metropolitan Bank*, (1873) 27 L. T. N. S. 849.

Sec. 132.

to deliver not only one part of the bills so drawn but all of them; (*a*) and also that extinguishment of one of them operates to extinguish the others also. (*b*)

Each referring to others.

The reference in each of these sets to the other bills of the set is in the nature of a condition as to payment, that is, that it shall be only payable provided the others remain unpaid. Thus, the first part contains the words "Pay this my first of exchange, second and third remaining unpaid." This condition operates as a notice to a holder taking up the bill that all parts constitute one bill and puts him on guard to make inquiries as to all parts of the bill; for "suppose a bill is drawn in triplicate; would any man rely on one set without knowing what had become of the other two?" (*c*) Besides, it is essential for the protection of the drawer to insert such a condition in each part of the set, for, if he intending to make a set of three parts should omit to make this condition in the first, and make payment of the second conditional on non-payment of the first, and payment of the third conditional on non-payment of the other two, he might perhaps be obliged to pay each. In such a case it would be no defence to an action by a *bona fide* holder of the second to plead that he had paid the third, nor to such an action on the first, that he had paid either of the others. But, an omission is not perhaps material when it must have arisen from a mistake, as for instance, if the words were "Pay this my first of exchange, second and fourth not paid," the third being left out by mistake. (*d*)

Acceptance of only one of the set.

As to acceptance of bills in sets, see section 7, cl. 3; only one of the parts is to be accepted, for if more than one part is to be accepted, and if the parts come into the hands of different parties for value *bona fide*, the acceptor will be held liable on each of his acceptances; (*e*) so also would an indorser be liable, if he improperly circulates two parts to different holders. The acceptor should take care to pay only the parts accepted by him, for, if he should pay another part, he is still liable on his accepted part, because it may be outstanding in the hands of a holder in due course. (*f*)

(*a*) *Kearney* v. *West Granada Gold and Silver Mining Company*, (1856) 1 H. & N. 412: see *Societe Generale* v. *Agopian*, (1895) 11 T. L. R. 244.

(*b*) *Holdsworth* v. *Hunter*, (1830) 10 B. & C. 449, 454.

(*c*) *Lang* v. *Smyth*, (1831) 7 Bing. 284, 294.

(*d*) *Davison* v. *Robertson*, (1815) 3 Dow. (H.L.) 218, 228; Chitty (11th Edn.) 111.

(*e*) *Holdsworth* v. *Hunter*, (1830) 10 B. & C. 449; B. of Ex. Act, sec. 71 (2).

(*f*) B. of Ex. Act, sec. 71 (5).

133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Sec. 133.

Holder of first acquired part entitled to all.

NOTES.

A person who negotiates a bill of exchange drawn in a set is bound to deliver up all the parts in his possession, though by this negotiation it has been held that he does not warrant that he has the rest. (*a*) Thus, a foreign bill was made in four parts by A and was indorsed by the payee to B, who indorsed it to the defendant, who indorsed it to C, who again indorsed it to the plaintiff, the first of four parts only came into the possession of the plaintiff; who having lost the bill brought an action against the defendant for not delivering over the other parts. Only the first had ever come into the hands of the defendant and he was not able to obtain possession of the others; in that case, it was held that, though he may be bound to pass to his transferee or even a subsequent one all parts in his possession, no action would lie against him for parts not in his possession, as there was no obligation on the part of the defendant to hand over the other parts. (*b*) Under the Act, where two or more parts of a set are negotiated to different holders in due course, he who first acquires title to his part, is deemed to be the true owner, and he may, it is said, maintain trover for the other parts even against a subsequent *bona fide* holder. But, this right of the holder cannot affect the right of a person who in due course accepts or pays the parts first presented to him. (*c*)

(*a*) *Pinard* v. *Klockman*, (1863) 32 L. J. Q. B. 82.

(*b*) *Ibid.*

(*c*) B. of Ex. Act, sec. 71 (3).

CHAPTER XVI.

OF INTERNATIONAL LAW.

Law governing liability of maker, acceptor or indorser of foreign instrument.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

ILLUSTRATION.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

NOTES.

Foreign laws recognised.

The laws of a country have no binding force beyond its own boundaries; but the commercial intercourse between people of one country and those of another has introduced nice questions of competitions in the laws of these nations which are not always easy to determine. It is often said that comity is the basis on which a foreign law is recognised as governing a case which our tribunals are called upon to adjudicate, and that comity is freely exercised by civilised countries which look for and receive similar reciprocal courtesies from other countries. "But if we understand by comity, simply politeness meted out at the caprice of the Judge or granted in consideration of similar concessions by the State whose law for the particular case is accepted, then comity is not the true foundation on which our acceptance of rules of private international law rests. For when a foreign law binds a particular case, then it becomes partly the law of the country

Sec. 134.

As a necessity.

and parties are entitled to have that law applied as of right." (*a*) The rule seems to rest more on necessity than on any courtesy, for in case the Courts of our country decline to decide any question not clearly defined by the law of the country, this course of action would exclude natives of that country no less than foreigners from recourse to that tribunal. For example, "an Englishman who had entered into a contract with a Scotchman at Edinburgh or with a Frenchman at Paris would, if the principle suggested were rigidly carried out, be unable to bring an action in the English Courts for a breach of the contract, to which may be added that, were the same principle adopted by the Courts of other countries, neither party to such contract would have any remedy anywhere for its breach." (*b*) To this rule of the applicability of the foreign law, three important exceptions may be noticed here. Courts will not enforce a right otherwise duly acquired under the law of a foreign country (1) when the enforcement of such a right is inconsistent with any Statute intended to have extra-territorial operation, (2) where the enforcement of such a right is inconsistent with the policy of the land where the action is brought or with the maintenance of the political institutions of that land, and (3) where the enforcement of such a right involves interference with the authority of a foreign Sovereign within the country whereof he is the Sovereign. (*c*)

When not applied?

For it is said that "a State must be just before it is generous, and therefore no State should exercise comity in favour of contracts which violate its own laws or the law of Nature or the law of God." The special provisions made in the case of negotiable instruments in the following sections are but a fitting recognition of the general use of bills and notes as a medium of exchange and their general circulation from one country to another in commercial transactions. So various are the questions of private international law in regard to negotiable instruments that may arise for decision in Courts that it is possible to indicate only a few of the principles applicable to such cases. The provisions in the Act are not exhaustive and require largely to be supplemented by the rules of international law as laid down by decided cases and the text-writers on the subject. (*d*) One important fact to remember in all cases is that a bill of exchange does not embody one single contract, but is a series of different contracts hanging on to the original contract. The contracts of the drawer, acceptor and indorser

(*a*) Wharton, sec. 1 (a) at p. 8 (note).
(*b*) Dicey (4th Edn.) 8.
(*c*) Dicey (4th Edn.) 27, 28.
(*d*) Ex parte *Robarts*, (1886) 18 Q. B. D. 286 (C. A.); *Embiricos* v. *Anglo-Austrian Bank*, (1905) 1 K. B. 677, 686.

Sec. 134. are distinct and separate, and in dealing with each of them different considerations arise.

The principles of international law relating to contracts in general may be discussed under the following heads: (1) capacity to enter into contracts, (2) formal validity of the contract or the form in which a contract is to be entered into, (3) the interpretation and obligations arising under the contract, and (4) the rules of procedure regulating actions on such instruments.

Law as to capacity.

(1) With reference to capacity to enter into contracts, the text-writers on international law hold conflicting views. Continental jurists hold the view advocated by Savigny, (*a*) that capacity to contract ought to be governed by *lex domicile*, *i.e.*, the law of domicile; while Justice Story (*b*) holds the view that it ought to be governed by *lex loci contractus*, *i.e.*, the law of the place where the contract is made. One of the American text-writers lays down an exception to the rule indicated by Story in favour of infancy. (*c*) Dicey and Westlake maintain the view on the authority of cases decided in England that capacity to enter into a contract of marriage is governed by the law of domicile at the time of making the contract. (*d*) Dicey further says that a different rule prevails in England with reference to mercantile contracts, (*e*) though the language used in *Sottomayor* v. *De Barros* (*f*) implies that the law of domicile of a person governs his capacity to enter into any contract whatsoever. The High Courts in India have adopted the principle laid down in *Sottomayor* v. *De Barros* with reference to all kinds of contracts. (*g*) Both the Indian and English Acts are silent on the point. Under section 26 of the Indian Act, the capacity to be bound by making, drawing, or indorsing a negotiable instrument is co-extensive with the capacity to enter into a contract. So, the principles of international law applicable to contracts in general are applicable *per se* to negotiable instruments also. At a conference of international lawyers, the rule suggested and passed with reference to this point is that capacity

---

(*a*) Savigny's, Conflict of Laws, 153.

(*b*) Story's, Conflict of Laws, secs. 64, 81, 82.

(*c*) Wharton, sec. 41.

(*d*) Dicey (4th Edn.) 596, 598; Westlake, (5th Edn.), Chap. iii, sec. 1; *Sottomayor* v. *De Barros*, (1877) 3 P. D. 1 (C. A.); *Pitt* v. *Pitt*, (1864) 4 Macq. 627, 640; *Brook* v. *Brook*, (1861) 9. H. L. C. 193; but see *Ogden* v. *Ogden*, (1908) P. 46; *Chetti* v. *Chetti*, (1909) P. 67.

(*e*) Dicey, (4th Edn.) 599, 600; Cf. *Male* v. *Roberts*, (1800) 3 Esp. 163; In re *Soltykoff*, (1891) 1 Q. B. 413; Chalmers (10th Edn.) 71.

(*f*) (1877) 3 P.D. 1; *Cooper* v. *Cooper*, (1888) 13 A.C. 88.

(*g*) *Rohilkhand and Kumaun Bank* v. *Row*, 7 All. 490; *Lachminarain* v. *Fateh Bahadur*, 25 All. 195; *Kashiba bin Narsappa Nikade* v. *Shripat Narshiv*, 19 Bom. 697.

to draw a bill of exchange, etc., ought to be governed by the law of the place where the bill is made. (*a*)

Sec. 134.

Law as to validity.

(2) The formal validity of an instrument is determined by *lex loci contractus celebrationis* (or the *lex loci actus*) *i.e.*, the law of the place where the contract is made. (*b*) All the jurists and text-writers are agreed on this point, and section 72, cl. (1) of the Bills of Exchange Act embodies this rule. The Indian Act does not lay down any such rule. Any difficulty which may arise in the application of this principle is generally due to one of two causes; first, there may be a doubt as to the place where a given contract is finally completed or made; secondly, in some cases, it is very difficult to determine whether a given formality belongs to the form of contract, in which case it is governed by the law of the place where it is made, or to the evidence of contract, in which case it is governed by the law of procedure which depends upon the place where the action is brought. (*c*)

If a contract is made by correspondence, the place where the proposal is accepted is the place where the contract is made. The promisor is deemed in law to go to the place where the promisee is, and there the contract takes place. So also the place, where the letter of acceptance is posted, is the place where the contract is made. The place where the bill or note is made, is not the place where a bill or note is signed but the place where the delivery of the instrument takes place, for then it is that the contract is complete. (*d*) But if a person travelling in a train enters into a contract, his domicile is said to be the place where the contract is made. *Prima facie*, the place mentioned in a bill or note is presumed to be the place where it is made, and this presumption may be rebutted by evidence to the contrary.

Secondly, if the formalities, required by the law of the place where the contract is made, are not complied with, what would be its effect on the contract? Here again, the writers on international law differ. Savigny and his followers hold that the agreement does not become void if the formalities are not complied with. The maxim *locus regit actum* according to them is never disabling, but only facultative. (*e*) It cannot make an agreement void, if it is otherwise valid. But the

---

(*a*) 9 Bom. L. R. (Journal) 1.

(*b*) *Guaranty Trust Co.* v. *Hannay & Co.*, (1918) 2 K.B. 623.

(*c*) *Palaniappa Chetti* v. *Periya Karuppan Chetti*, 17 Mad. 262.

(*d*) *Chapman* v. *Cottrell*, (1865) 34 L. J. Ex. 186; Re *Marseilles Extension Railway and Land Co.*, (1885) 30 Ch. D. 598; *Baring* v *Inland Revenue Commissioners*, (1898) 1 Q. B. 78; Dicey (4th Edn.) 659.

(*e*) Chalmers (10th Edn.), 281.

Sec. 134. better opinion, which is accepted by English text-writers on the subject and embodied in the Bills of Exchange Act, is that, when the agreement is rendered void by omission to comply with the formalities prescribed by the law of the place where it is made, it is void everywhere. If the agreement is not rendered void by such omission, then such omission has no effect at all. Cases arise on this point frequently on the question of stamp. If a bill be not stamped, then it is void according to the law of some countries, while under the laws of other countries it is only inadmissible in evidence. If the bill be void for want of stamp in the country where it is drawn, it was held in England formerly that it was void there also, (*a*) while if the instrument be merely inadmissible in evidence for want of stamp in the country in which it is made, the holder can sue upon the bill in England. (*b*) In England, the former part of the rule has been altered by the Bills of Exchange Act which provides that where a bill is issued out of the United Kingdom, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue. (*c*) The Indian Act is silent on the point, but the rule which was in force in England before the passing of the Bills of Exchange Act has been applied as consistent with principles of international law, in the absence of any specific provision. Thus, where a document executed in Hyderabad State was not stamped as required by the laws of that State, and it was found that it was not admissible in evidence even after payment of penalty under the law in the Nizam's dominions, it has been held that as the foreign statute does not make the contract void, but only makes it inadmissible in evidence, the note can be sued upon in British India. (*d*) But, if the law of the foreign country provides that by reason of the want of stamp, the agreement itself shall be void, then the plaintiff cannot succeed in a Court in British India, because *ex hypothesi* there would be no contract on which he could succeed. (*e*)

According to the principles indicated above, a bill drawn in England and payable in Paris is valid, though it does not state that value was received, which statment is necessary according to the French commercial law. Again, the verbal acceptance of a bill drawn in London on a town in Illinois is valid, as a verbal acceptance is valid under the law of the latter place. (*f*) Similarly an un-

---

(*a*) *Clegg* v. *Levy*, (1812) 3 Camp. 166.

(*b*) *Bristow* v. *Sequeville*, (1850) 5 Ex. 275; Cf. *Republica de Guatemala* v. *Nunez*, (1927) 1 K. B. 669, 690.

(*c*) B. of Ex. Act, sec. 72.

(*d*) *Venkatrami Reddi* v. *Sri Maharaja Seetharama*, 53 Mad. 968.

(*e*) *Dhondiram* v. *Sadasuk*, 42 Bom. 522, 528.

(*f*) Cf. *Sudder* v. *Union Bank*, (1876) 1 Otto Sub Court U.S. 406; Chalmers (10th Edn.) 281.

stamped promissory note executed to the Nawab of Rampur, which under the statute of that State does not require to be stamped as a document in favour of the State, need not be stamped and can be sued upon in British India. (*a*)

Law as to interpretation, rights, etc.

(3) Under the international law, the interpretation and the nature of rights and obligations arising under a contract are determined by the *lex loci solutionis*, that is, the law of the place, where the contract is intended to be fulfilled. (*b*) Such a place, sometimes, is specified in the instrument itself, otherwise, it is presumed to be the place where the contract is made. A bill of exchange embodies a series of contracts, as each indorsement amounts to a fresh drawing. The drawer and indorsers do not contract to pay the amount due under the instrument in the foreign place on which the instrument is drawn payable, but they only guarantee its acceptance and payment in that place by the drawee, and in default of such payment, they agree, upon due notice of dishonour being given, to reimburse the holder in the place where they respectively enter into such contracts for the loss sustained by him. (*c*) The case of a maker or an acceptor is different, because he undertakes to pay the amount due under the instrument in the place indicated there. So, as regards a maker or acceptor, the law of the place where the note or bill is payable governs the incidents attaching to his contract; while in the case of a drawer or any indorser, the law of the place where such drawing or indorsing takes place determines those incidents. (*d*) Thus, it has been held that a French bill payable to the order of M.V., but indorsed by E.N., (who was proved to be an agent of M.V.,) was a valid indorsement to be recognised by an acceptor in England, as such indorsement is good under the French law, and as under that law an agent if so authorised can sign his own name for the principal on the bill for negotiation. (*e*)

Examined in the light of the principles indicated above, both the English and Indian laws as codified in the respective Acts show deviations. The liability of the maker of a note under the Indian law is governed by the law of the place where the note is made, while according to the true principles of international law, the law of the place of payment ought to apply. (*f*) As to the liability of the drawer of a

(*a*) *Amina Begam* v. *Navab of Rampur*, 33 All. 571.

(*b*) *Benaim & Co.* v. *L. S. Debono*, (1924) A.C. 514; Savigny's Conflict of Laws, 222; Story's Bills of Exchange, secs. 153, 154; Dicey (4th Edn.) 574, 578, 623, 626, 631; Chalmers (10th Edn.) 282; Wharton, sec. 398; Cf. *Rouquette* v. *Overmann*, (1875) L.R. 10 Q.B. 525,

(*c*) Story's Bills of Exchange, sec. 154.

(*d*) See *Republica De Guatemala* v. *Nunez*, (1927) 1 K. B. 669.

(*e*) *Koechlin Et Cie.* v. *Kestenbaum Bros.*, (1927) 1 K. B. 889.

(*f*) See *Mathappa Chetty* v. *Chellappa Chetti*, 1 Mad. 196 (decided prior to the Act).

Sec. 134.

bill or of a cheque, it is regulated by the law of the place of payment; and this is in accordance with the international law and also with the English law. So also is the liability of the acceptor governed by the place of payment, and in this respect the Indian law follows the international law. Accordingly, to determine the liability of an acceptor of a bill drawn abroad and payable in British India, the provisions of this Act were applied and it was held that neither protest nor dishonour was necessary to charge him. (*a*) Under the Bills of Exchange Act, however, the provisions relating to acceptance are contrary to the principles of international law, though Westlake and Foote support them on the ground that the liability of the acceptor is dependent on the law of the place where he first assumed such liability. (*b*) As for the indorser's liability, the Indian law differs altogether from the international law; while under the latter, his liability is to be settled by the law of the place where the indorsement is made, the Indian Act says the law of the place of payment shall govern his liability. On this point, the English Act follows the international law, and provides that the interpretation of the drawing and indorsement shall be governed by the law of the place where such contract is made.

The word "interpretation" does not mean mere construction of the contract, but denotes the legal effect of the instrument. The Indian Act uses the word "liability" which means the result derived from the interpretation of the contract. While it is doubtful whether the term "interpretation" can signify measure of damages which is regulated by the law of the place where the contract is intended to be fulfilled, the word "liability" does include such measure of damages.

The cases decided in England are therefore not of much use to us in India, though they may be of help in elucidataing the principles of international law above set out. The effect of an indorsement is determined by the law of the place where such contract is made. (*c*) Again, the rule that the transfer of chattels must be governed by the law of the country in which the transfer takes place applies to negotiable instruments. So, a person deriving title through a forged indorsement, in a country where such a title can be validly acquired, gets a good title in England. (*d*) The holder's title to the bill is determined by

---

(*a*) *Ardeshir Sorabsha* v. *Khushaldas*, 32 Bom. 247.

(*b*) Westlake, sec. 229 at p. 218, Foote, p. 434.

(*c*) *Trimbey* v. *Vignier*, (1834) 1 Bing N. C. 151; *Bradlaugh* v. *De Rin*, (1868) L. R. 3 C. P. 538: (1870) L. R. 5 C. P. 473.

(*d*) *Embiricos* v. *Anglo-Austrian Bank*, (1905) 1 K. B. 677 (C. A.); *Alcock* v. *Smith*, (1892) 1 Ch. 238.

the law of the place where it is payable, and the acceptor is bound to pay to the holder, though the indorsement is void according to the law of the country where it was made. (*a*) In some countries, promissory notes payable to bearer are not transferable by mere delivery, but such a transferee can sue in England. (*b*) There is also a difference of opinion in England on the question whether the legality of the consideration is to be determined by the law of the place where the bill is payable, though judicial authority is in favour of such view. (*c*)

Law as to damages and interest.

The measure of damages and rate of interest are governed by the law of the place where the bill is payable in the case of the acceptor (*d*) and by the law of the place where the drawing or indorsement is made in the case of the drawer or indorsers. (*e*) Again, the effect of discharge (*f*) or set-off (*g*) is governed by the same principles. The Indian Act lays down a different rule in the case of indorsers.

Law as to procedure in suits.

(4) Rules of procedure are determined by the *lex fori*, that is the law of the place where the action is brought. (*h*) Admissibility or inadmissibility of evidence or the time within which an action should be brought (*i*) is governed by that law, but not defences such as discharge or set-off. (*j*)

Law of place of payment governs dishonour.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

(*a*) *Lebel* v. *Tucker*, (1867) L. R. 3 Q. B. 77; *Trimbey* v. *Vignier*, (1834) 1 Bing. N. C. 151.

(*b*) *De La Chaumette* v. *Bank of England*, (1829) 9 B. & C. 208.

(*c*) *Moulis* v. *Owen*, (1907) 1 K. B. 746 (C. A.); *Saxby* v. *Fulton*, (1909) 2 K. B. 208; *Socite Anonyme* v. *Baumgart*, (1927) 96 L. J. K. B. 789.

(*d*) *Cooper* v. *Waldegrave*, (1840) 2 Beav. 282

(*e*) *Gibbs* v. *Fremont*, (1853) 9 Ex. 25; Ex parte *Meredith & Conver's claims*, (1863) 32 L.J. Ch. 300.

(*f*) *Potter* v. *Brown*, (1804) 5 East, 124.

(*g*) *Burrows* v. *Jemino*, (1726) 2 Star. 733; *Allen* v. *Kemble*, (1848) 6 Moo. P.C. 314.

(*h*) *Palaniappa Chetti* v. *Peria Karuppan Chetti*, 17 Mad. 262.

(*i*) *Huber* v. *Steiner*, (1835) 2 Bing. N. C. 202; *Harris* v. *Quine*, (1869) L. R. 4 Q. B. 653; *Phillips* v. *Eyre*, (1870) L. R. 6 Q. B. 1, 28; *British Linen Co.* v. *Drummond*, (1830) 10 B. & C. 903.

(*j*) *Murugesa* v. *Annamalai*, 23 Mad. 458.

Sec. 135.

ILLUSTRATION.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

NOTES.

Law as to dishonour, law of place of payment.

This section is an application of the maxim of international law, *locus regit actum.* The obligation incurred by accepting a bill of exchange, or by making a promissory note is measured by the law of the place where it is payable, that is, the manner of enforcing the obligation and the mode of performance of the obligation are governed by the law of the place of performance. The duties of the holder too are determined by the law of the place of performance. The conduct and refusal of the obligee is to be considered in the light of the law of that place where such acts are done. (*a*) The time or the date of the performance of the obligation and the allowance of the days of grace are determined by the law of the place of payment. (*b*) By the English law, days of grace are allowed on bills payable after date; but by French law, they are not allowed. So, a bill drawn in Paris on London is entitled to three days of grace, but a bill drawn in London on Paris is not entitled to days of grace. (*c*) Again, when a bill was drawn in England payable in Paris three months after date, and when by the law of France the maturity of all the bills was postponed for a month, it was held that the maturity of the bill was to be determined according to the law of France where it was payable. (*d*) So also, where a bill was made payable in Germany, and before the date of payment, war broke out between England and Germany and where it was proved that by certain ordinances of the German Government, the dates of payments were postponed till further notice, Younger, J., held that the due date had therefore not arrived, and dismissed a suit by the holder of such a bill against the custodian of enemy property. (*e*)

Law as to demand for payment.

The proper time for payment and for the notice of dishonour is

(*a*) *Sukhlall* v. *Eastern Bank,* 46 Cal. 584.

(*b*) B. of Ex. Act, sec. 72 (5).

(*c*) *Rouquette* v. *Overmann,* (1875) L. R. 10 Q. B. 525.

(*d*) *Ibid*; see also *Allen* v. *Kemble,* (1848) 6 Moo. P. C. 314; *Gibbs* v. *Fremont,* (1853) 9 Ex. 25; *Rothschild* v. *Currie,* (1841) 1 Q. B. 43

(*e*) In re *Francke and Rasch,* (1918) 1 Ch. 470.

that fixed by the law of the country where the payment is to have been made. Though the present section refers only to dishonour and notice of dishonour, demand at the proper time by the holder is necessary in order to constitute dishonour. Thus, it is to be inferred that the time when a bill or note becomes payable is to be determined by the law of the place of payment. The law of the place where a bill or note is made payable determines what constitutes dishonour, and what notice of dishonour will be sufficient. The section applies only to a case where the instrument is made payable in a place different from that in which it is made or indorsed; but the rule is the same in the case of instruments payable in the same place where it is made or indorsed, because that place itself being the place of payment, the law of that place determines the incidents relating to dishonour. Since the drawer or indorsers of a bill of exchange and the indorsers of a promissory note are sureties for the due performance of the obligations incurred by the acceptor or maker, the law of the place where the bill or note is payable indirectly affects their obligations also. This is the reason why the necessity and sufficiency of a demand or a notice of dishonour or a protest in order to charge any other party is to be determined by the law of the place of performance.

Law as to notice by parties other than holder.

Though the text-writers are agreed on the point that notice of dishonour from the last holder to prior parties ought to be governed by the law of the place where the instrument is payable, they hold conflicting views on the question of notice of dishonour given by any other person than the last holder. Both Westlake and Story hold (*a*) that the contract of a drawer or an indorser is to be governed by the law of the place where he affixes his name, that being the law which imposes the obligation once for all upon him. The drawer of a bill and each of the indorsers of a bill or note contracts with the next following party to pay him in due course, notice of liability being given to him, and such notice must be measured by the law of the place where such contract takes place. Westlake, however, says that it is a point not settled. On the other hand, Dicey and Foote (*b*) are of opinion that notice of dishonour given by an indorsee to his prior parties is to be governed by the law of the place where the instrument is payable. When incidents of payment are governed by the law of the place where the instrument is payable, they urge that the proceedings consequent on non-payment should also be governed by that

---

(*a*) Story, secs. 316, 316 (a), 361 (b); Westlake, sec. 232, at p. 321.

(*b*) Dicey (4th Edn.) 665; Foote, p. 435.

Sec. 136.

law. There are some cases (*a*) on the point in English law which are claimed to support both the views above quoted. At any rate, so long as *Rothschild* v. *Currie* (*b*) is good law, the position taken up by Dicey and Foote seems to be the better one. Even section 72, cl. (3) of the Bills of Exchange Act, is not decisive on the point; for it is doubtful whether the holder under the section means the last holder. But this section in the Indian Act adopts the law as laid down in *Rothschild* v. *Currie*, and the illustration to the section makes it clear that in India the controversy is settled in favour of the law of the place of payment.

Instrument made, etc., out of British India, but in accordance with its law.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

NOTES.

Acceptance and indorsement of invalid bill, etc.

As stated already, a negotiable instrument generally does not embody a single contract but contains a series of contracts. Though prior agreements on it are invalid by the law of the country where they are entered into, any subsequent agreement on it created by acceptance or indorsement in British India is valid, and can be enforced against persons who become parties to it in British India. This section seems to have been taken from Art. 85 of the German Bills of Exchange Act, which is also embodied in the Bills of Exchange Act, section 72, cl. (1). The invalidity of an instrument under foreign law does not affect the liability between persons who subsequently become parties to it in British India. The section would not apply to cases where the person sought to be charged had become a party previous to the acceptance or indorsement in British India.

(*a*) *Rothschild* v. *Currie* (1841) 1 Q. B. 43; see also *Hirschfeld* v. *Smith*, (1866) L. R. 1 C. P. 340; *Horne* v. *Rouquette*, (1878) 3 Q. B. D. 514.

(*b*) (1841) 1 Q. B. 43.

Sec. 137.

Courts in England do not regard the laws of any other country framed for the purpose of revenue as binding, and Courts in India will follow the same rule. (*a*) The Stamp Act requires a negotiable instrument drawn or made out of British India to be stamped again for negotiation in British India, but a suit can be brought on it, if it is not negotiated in British India, without affixing a stamp to it. (*b*) Under the Indian Stamp Act, want of stamp makes the document only inadmissible in evidence.

Presumption as to foreign law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

NOTES.

Proof of foreign law.

Courts in British India will not take judicial notice of foreign law. Any person relying on such law must prove it by evidence, and in the absence of such evidence, the Courts shall presume the law of any foreign country to be the same as the law of British India. (*c*) Under section 57 of the Indian Evidence Act, the Courts shall take judicial notice (1) of all laws and rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India, and (2) of all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed. So, the Courts in British India are bound to take judicial notice of the English Bills of Exchange Act; but as to the law of any other country, the Courts in India will presume such law to be the same as in British India till the contrary is shown. (*d*)

By evidence.

In India, proof of foreign law may be given in three ways :—

By text-books, etc.

(1) By means of law books, printed and published under the authority of the Government of the foreign country, and the reports of rulings of the Courts of such country contained in a book purporting to be a report of such rulings. The Indian law differs from the Eng-

---

(*a*) *Subraya Pillai* v. *Subraya Mudali*, 4 M. H. C. R. 14.

(*b*) *Mahomed Rowthan* v. *Mahomed Husin Rowthan*, 22 Mad. 337.

(*c*) *Brown* v. *Gracey*, (1821) D. & R. N. P. C. 41 (n); *Lloyd* v. *Guibert*, (1865) L R. I Q. B. 115 at 129; *Jacobs* v. *Credit Lyonnais*, (1884) 12 Q. B. D. 589.

(*d*) *The Parchim*, (1918) A. C. 157, 161.

Sec. 137

lish law on this point. In England, the Judges "have not organs to know and to deal with the texts of foreign law, and require the assistance of a lawyer who knows how to interpret it." (*a*) The law of a foreign State is a fact which must be established by evidence like any other fact, and such fact must be proved by oral testimony. (*b*) But, the Indian Evidence Act allows the use of text-books in Courts, and the provision is perhaps based on the observations of the Judicial Committee in *Bremer* v. *Freeman*; (*c*) but such text-books cannot be used in evidence unless they are published under the authority of the Government of the foreign country.

By testimony of experts.

(2) By oral testimony of experts.—But the evidence given must be that of a person specially skilled in such foreign law. (*d*) The evidence of a person who has merely studied foreign law will not be admissible, because the word 'skilled' shows that he must have had some practice in the application of the principles of that foreign law. In England, the only witness competent to give such evidence is some person who is conversant with the foreign law, either as a legal practitioner in the foreign State or as holding some office there, the duties of which entail such knowledge. (*e*)

By opinion of foreign Courts.

(3) By the opinion of foreign Courts.—By the Statute of 24 Vict. ch. II, the Courts in His Majesty's dominions are empowered to state a special case to a superior Court of any country in order to ascertain the law of that country and the certified copy of the opinion of the foreign Court upon the case submitted to it shall be admitted to prove the foreign law. By the Statute of 22 and 23 Vict. ch. 63, Courts in one part of His Majesty's dominions are empowered to adopt a similar procedure in order to ascertain the law prevailing in any other part.

(*a*) *Sussex Peerage Case*, (1844) 11 Cl. & F. 85, 115, per Lord Brougham; see also *Concha* v. *Murrietta*, (1889) 40 Ch. D. 543; *Perlak Petroleum &c.* v. *Deen*, (1924) 1 K. B. 111.

(*b*) *Nelson* v. *Bridport*, (1848) 8 Beav. 547.

(*c*) (1857) 10 Moo. P C. 358.

(*d*) Ind. Evidence Act, sec. 45.

(*e*) *Bristow* v. *Sequeville*, (1850) 5 Ex 275; *Sussex Peerage Case*, (1844) 11 Cl. &. F. 85; *Perlak Petroleum Co.* v. *Deen*, (1924) 1 K. B. 111.

CHAPTER XVII.

NOTARIES PUBLIC.

Power to appoint notaries public.

138. The *Local Government may, from time to time by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

NOTES.

This chapter, consisting of this and the following section, was inserted by section 10 of the Negotiable Instruments Act II of 1885.

The definition of notaries public given in section 3 of this Act includes also persons appointed by the Local Government under the powers given by this section. For appointment of notaries public within districts and sub-districts of the Madras Presidency, see Madras. R and O.; in Bombay, see Bombay. R. and O. In the Madras Presidency, the Registrars and the Sub-Registrars of Assurances of certain places are by virtue of their office appointed as Notaries Public of those localities.

Power to make rules for notaries public.

139. The *Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

---

* The words 'Local Government' were substituted for the words 'Governor-General in Council,' by sec. 2 and Sch. of the Decentralization Act IV of 1914.

Sec. 139.

NOTES.

Under the powers given in the Act, the Local Government has made rules for the guidance and control of notaries public and also for fixing their fees. For their guidance, it is provided by those rules that they shall use the forms appended to those rules and also keep a register, called the Notarial Register, in which the declarations of payment for honour are to be recorded, and the notings and protests are also to be registered. They are subject to inspection (not more than twice a year) by the District Judge or other officer appointed by the Government in this behalf. A notary is also required to keep a circular seal bearing his name or the name of his office and the circumscription " Notary Public." A table of fees to be charged by them for noting or protesting an instrument or recording the declaration of payment for honour is also given.

For rules under this section, see General R. and O. On the extension of the Act to Upper Burma, similar rules were framed with respect to that province, for which see Notification No. 439, dated 11th May, 1894, Burma Gazette, Part II, page 109.

The rules are collected for the sake of convenience in Appendix A.

SCHEDULE.

[ENACTMENTS REPEALED]

Repealed by the Repealing and Amending Act, XII of 1891.

APPENDIX. A.

RULES RELATING TO NOTARIES PUBLIC.

ORDER 65 (b).

Notification of the Government of India, No. 1433, Judicial, dated the 30th September, 1886.—In exercise of the power conferred by section 139 of Act XXVI of 1881, The Negotiable Instruments Act, 1881 (as amended by Act II of 1885), the Governor-General in Council is pleased to make the following Rules for the guidance and control of Notaries Public appointed under that Act, and fixing the fees payable to those Notaries:—

1. Notaries Public shall, in transacting business under the Act, use the forms set forth in the Appendix to this Notification.

2. Besides recording declarations of payment for honour (sec. 113), Notaries Public shall, following the practice existing in the Presidency-towns, also register notings and protests made by them. No particular form of register is necessary for these purposes, but Notaries Public shall keep a substantial blank book in which to enter copies of all the letters which they may write for presenting bills for acceptance or payment or better security; of all bills*, noted or protested or paid for honour, together with all the indorsements thereon (including that made by themselves, to the effect that the bill has been noted or protested for non-acceptance or non-payment or want of better security); and of all protests made by themselves and of all declarations made by payers for honour. Notaries Public shall further, after examination of each entry in the book, affix their signature thereto, and where demand of acceptance or payment or better security was made by a clerk, shall cause him to affix his signature also to the entry relating to the demand.

3. The book shall be known as the Notarial Register, and the pages thereof shall be numbered consecutively.

4. Every Notary Public shall permit the District Judge, or such officer as the Local Government, from time to time, appoints in this behalf to inspect his register at such times not oftener than twice a year, as the District Judge or officer may fix.

5. When the original instrument is in an oriental language, any noting or protest or entry in his register which has to be made in respect of the instrument by a Notary Public may be made either in that language or in English.

6. In making presentments of bills or notes, Notaries Public shall observe the provisions of Chapter V of the Act:

---

*In cases where the language of the bill is unknown to the Notary Public, and where it is impossible to find any one acquainted with the language of the bill to copy it into the register, an entry in the Register of an abstract of the bill will be sufficient.

Appx. A.

Provided that it shall not be necessary for a Notary Public to allow the drawee of a bill of exchange, time for deliberation, as provided in section 63.

7. Every Notary Public shall use a plain circular seal, bearing, if he has been appointed by name, his name and the name of the local area within which he has been appointed to exercise his functions, and the circumscription, "Notary Public," and if he has been appointed by virtue of his office, the name of his office and of the local area within which he has been appointed to exercise his functions and the circumscription "Notary Public."

8. Every Notary Public shall have an office at such place within the local area for which he has been appointed as may be approved in this behalf by the District Judge.

9. Notaries Public shall charge fees at rates mentioned below, namely—

(1) For noting an instrument—

If the amount of the instrument does not exceed							Rs.
Rs. 1,000						...	2
If it exceeds Rs.	1,000,	but does not exceed	Rs.	5,000		...	3
Do.	,,	5,000	do.	,,	20,000	...	5
Do.	,,	20,000	do.	,,	30,000	...	6
Do.	,,	30,000	do.	,,	50,000	...	7
Do.	,,	50,000				...	8

(2) For protesting an instrument—

If the amount of the instrument does not exceed							Rs.
Rs. 1,000						...	6
If it exceeds Rs.	1,000,	but does not exceed	Rs.	5,000		...	7
Do.	,,	5,000	do.	,,	20,000	...	10
Do.	,,	20,000	do.	,,	30,000	...	11
Do.	,,	30,000	do.	,,	40,000	...	12
Do.	,,	40,000	do.	,,	50,000	...	13
Do.	,,	50,000	do.	,,	60,000	...	14
Do.	,,	60,000	do.	,,	70,000	...	15
Do.	,,	70,000	do.	,,	80,000	...	16
Do.	,,	80,000	do.	,,	90,000	...	17
Do.	,,	90,000	do.	,,	1,00,000	...	18
Do.	,,	1,00,000					22

(3) For recording a declaration of payment for honour.....Rs. 2-8-0

(4) Duplicate protests,—half the charge for the original.

Note—In addition to the above fees, travelling allowance at the rate of 3 annas a mile by rail, and 8 annas a mile by road, may be charged when the Notary Public is required to attend at any place more than one mile from his office.

10. These rules shall come into force on the 1st day of January, 1887.

APPENDICES.

I

FORM OF NOTING.

(*See* SECTION 99).

(*To be made upon the instrument or upon a paper attached thereto, or partly upon each.*)

Reference to page in Notarial Register.

Date of presentment and dishonour.

Reason, if any, assigned for dishonour (or, if the instrument has not been expressly dishonoured, reason why holder treats it as dishonoured.)

Date of note (Sd.) A. B.,
Notary's Charges. *Notary Public.*

II

FORM OF PROTEST OF BILL OF EXCHANGE FOR NON-ACCEPTANCE.

(*See* SECTION 101).

On the day of 19 , I, A. B., a Notary Public, appointed under the Negotiable Instruments Act, 1881, of in (*here state the local area for which the Notary Public has been appointed*) in British India at the request of C. D. of , did at (*in person*) (*by my clerk*) (*by registered letter*), cause due and customary presentment to be made to, and did demand acceptance of, the bill of exchange hereto annexed (or " a literal transcript whereof and of everything written or printed thereupon is hereto annexed ") from E. F., the person upon whom the said bill is drawn, to which demand he made answer (state terms of answer if any) (or " to which demand he gave no answer "); wherefore I, the said Notary, at the request aforesaid by this writing, do, in the presence of M.N., and O.P., witnesses, protest against the drawer of the said bill of exchange and all other parties thereto and all others concerned for all exchange, re-exchange and all costs, damages and interest present and to come for want of acceptance of the said bill.

M. N., } *Witnesses.* Which I attest.
O. P., } (Sd.) A. B.,
Notary Public.

Note.—When after a bill is protested and before the protest is drawn up, it is accepted for honour, the protest should further state the name of the person by whom, and of the person for whom, and the manner in which, such acceptance was offered and effected.

Appx. A.

III

FORM OF PROTEST OF BILL OF EXCHANGE FOR NON-ACCEPTANCE, WHEN THE DRAWEE CANNOT BE FOUND.

(*See* SECTION 101).

(*a*) *Where search was made by Notary Public in person or by his clerk* :—

On the day of 19 , I, A. B., a Notary Public appointed under the Negotiable Instruments Act, 1881, of in (*here state the local area for which the Notary Public has been appointed*) in British India at the request of C. D., of , did (*in person*) (*by my clerk*), make due search at for E F., in order to present to, and demand from him, acceptance of the bill of exchange hereto annexed (or "a literal transcript whereof and of everything written or printed thereupon is hereto annexed") which is drawn upon the said E. F., but was unable to find him; wherefore I, the said Notary, at the request aforesaid by this writing, do, in the presence of M. N., and O. P., witnesses, protest against the drawer of the said bill of exchange and all other parties thereto and all others concerned for all exchange or re-exchange, and all costs, damages and interest present and to come for want of acceptance of the said bill.

(*b*) *Where registered letter was sent to the drawee* :—

On the day of 19 , I, A. B., a Notary Public appointed under the Negotiable Instruments Act, 1881, of in (*here state the local area for which the Notary Public has been appointed*) in British India, at the request of C. D., of , did send by post a registered letter addressed to E. F. at , wherein I enclosed and demanded from him acceptance of the bill of exchange hereto annexed (or "a literal transcript whereof and of everything written or printed thereupon is hereto annexed") which is drawn upon the said E. F., but the letter was returned undelivered, because the said E. F. could not be found; wherefore I, the said Notary, at the request aforesaid by this writing, do, in the presence of M. N., and O. P., witnesses, protest against the drawer of the said bill of exchange and all other parties thereto and all others concerned for all exchange, re-exchange and all costs, damages, and interest present and to come for want of acceptance of the said bill.

M. N.,
O. P., } *Witnesses.*

Which I attest,
(Sd.) A. B.,
Notary Public.

Note.—When, after a bill is protested and before the protest is drawn up, it is accepted for honour, the protest should further state the name of the person by whom, and of the person for whom, and the manner in which, such acceptance was offered and effected.

IV

FORM OF PROTEST OF PROMISSORY NOTE OR BILL OF EXCHANGE FOR NON-PAYMENT.

(*See* SECTION 101).

On the day of 19 , I, A.B., a Notary Public, appointed under the Negotiable Instruments Act, 1881, of in (*here state the local area for*

which the Notary Public has been appointed) in British India at the request of C. D., of did cause due and customary presentment to be made at

(*in person*) (*by my clerk*) (*by registered letter*) to and did demand payment of the promissory note (or bill of exchange, *as the case may be*) hereto annexed (or "a literal transcript whereof, and of everything written or printed thereupon is hereto annexed") from E. F., the maker of the said promissory note (or drawee or acceptor of the said bill of exchange, *as the case may be*), to which demand he made answer (*state the terms of his answer, if any*) (or "to which demand he gave no answer"); wherefore I, the said Notary, at the request aforesaid, by this writing, do, in the presence of M.N. and O. P., witnesses, protest against the maker of the said promissory note (or the drawer of the said bill of exchange, (*as the case may be*) and all other parties thereto and all others concerned for all exchange, re-exchange, and all costs, damages and interest present and to come for want of payment of the said promissory note (or bill of exchange, *as the case may be*).

M. N.,
O. P., } *Witnesses.*

Which I attest,
(Sd.) A. B.,
Notary Public.

Note.—When after a bill is protested and before the protest is drawn up, it is paid for honour, the protest should further state the name of the person by whom, and of the person for whom, and the manner in which, such payment was offered and effected.

V

PROTEST OF PROMISSORY NOTE OR BILL OF EXCHANGE FOR NON-PAYMENT WHEN THE MAKER, DRAWEE OR ACCEPTOR (AS THE CASE MAY BE) CANNOT BE FOUND.

(*See* SECTION 101).

(*a*) *Where search was made by Notary Public in person or by his clerk:*—

On the day of 19 , I, A. B., a Notary Public appointed under the Negotiable Instruments Act of 1881 of in (*here state the local area for which the Notary Public has been appointed*) in British India, at the request of C. D., of, did (*in person*) (*by my clerk*) make due search at for E.F., the maker (or drawee or acceptor, *as the case may be*) in order to present to and demand from him payment of the promissory note (or "bill of exchange" *as the case may be*) hereto annexed (or "a literal transcript whereof and of everything written or printed thereupon is hereto annexed"), but was unable to find him: wherefore I, the said Notary, at the request aforesaid, by this writing, do, in the presence of M.N. and O.P., witnesses, protest against the maker of the said promissory note (or drawer of the said bill of exchange, *as the case may be*) and all other parties thereto and all others concerned for all exchange, re-exchange, and all costs, damages and interest present and to come for want of payment of the said promissory note (or bill of exchange, *as the case may be*).

(*b*) *Where registered letter was sent to the maker, drawee or acceptor.*

On the day of 19 , I, A.B., a Notary Public appointed under the Negotiable Instruments Act, 1881, of in (*here*

Appx. A.

state the local area for which the Notary Public has been appointed) in British India, at the request of C.D., of did send by post a registered letter addressed to E F., at the maker (or drawee or acceptor *as the case may be*) wherein I enclosed and demanded from him payment of the promissory note (or "bill of exchange," *as the case may be*) hereto annexed (or "a literal transcript whereof and of everything written or printed thereupon is hereto annexed"), but the letter was returned undelivered because the said E.F., could not be found; wherefore I, the said Notary, at the request aforesaid, by this writing, do, in the presence of M.N. and O.P, witnesses, protest against the maker of the said promissory note (or the drawer of the said bill of exchange, *as the case may be*) and all other parties thereto and all others concerned for all exchange, re-exchange, and all costs, damage and interest present and to come for want of payment of the said promissory note (or bill of exchange *as the case may be*).

M. N.,
O. P., } *Witnesses.*

Which I attest,
(Sd.) A. B.,
Notary Public.

Note.—When after a bill is protested and before the protest is drawn up, it is paid for honour, the protest should further state the name of the person by whom, and of the person for whom, and the manner in which, such payment was offered and effected.

VI

FORM OF PROTEST OF BILL OF EXCHANGE FOR BETTER SECURITY.

(*See* SECTION 101).

On the day of 19 , I, A.B., a Notary Public appointed under the Negotiable Instruments Act of 1881, of in (*here state the local area for which the Notary Public has been appointed*) in British India, at the request of C. D., of , did exhibit the bill of exchange hereto annexed (or "a literal transcript whereof and of everything written or printed thereupon is hereto annexed") to E. F., the person on whom the said bill is drawn, and whose acceptance appears thereon, and did demand better security for the payment thereof when the same should become payable in consequence of the said E. F., having become insolvent (or "his credit having been publicly impeached," *as the case may be*), to which demand he made answer (or "to which demand he gave no answer") wherefore I, the said Notary, at the request aforesaid by this writing, do, in the presence of M. N. and O. P., witnesses, protest against the drawer of the said bill of exchange and the acceptor and all other parties thereto and all others concerned for all exchange, re-exchange, and all costs, damages and interest present and to come for want of better security for the payment of the said bill when due and payable.

M. N.,
O. P., } *Witnesses.*

Which I attest,
(Sd.) A. B.,
Notary Public.

Note.—When after a bill is protested and before the protest is drawn up it is accepted for honour, the protest should further state the name of the person by whom, and of the person for whom, and the manner in which, such acceptance was offered and effected.

VII

FORM OF PROTEST OF BILL OF EXCHANGE FOR BETTER SECURITY WHEN THE ACCEPTOR CANNOT BE FOUND

(*See* SECTION 101).

(*a*) *Where search was made by Notary Public in person or by his clerk* :—

On the day of 19 , I, A. B., a Notary Public appointed under the Negotiable Instruments Act of 1881, of in (*here state the local area for which the Notary Public has been appointed*) in British India, at the request of C. D of did (*in person*) (*by my clerk*) make due search at for E. F., in order to exhibit the bill of exchange hereto annexed (or "a literal transcript whereof and of everything written or printed thereupon is hereto annexed") to the said E. F., the person on whom the said bill is drawn, and whose acceptance appears thereon, and demand better security for the payment thereof when the same should become payable in consequence of his having become insolvent (or "his credit having been publicly impeached," *as the case may be*), but was unable to find him; wherefore I, the said Notary, at the request aforesaid, by this writing, do in the presence of M.N. and O.P., witnesses, protest against the drawer of the said bill of exchange and the acceptor and all other parties thereto and all others concerned for all exchange, re-exchange and all costs, damages, and interest present and to come for want of better security for the payment of the said bill when due and payable.

(*b*) *Where registered letter was sent to the acceptor* :—

On the day of 19 , I, A. B., a Notary Public appointed under the Negotiable Instruments Act, 1881, of (*here state the local area for which the Notary Public has been appointed*) in British India, at the request of C. D., of , did send by post a registered letter addressed to E.F., at wherein I enclosed the bill of exchange hereto annexed (or "a literal transcript whereof and of everything written or printed thereupon is hereto annexed") and did by such letter demand from the said E. F., the person on whom the said bill is drawn and whose acceptance appears thereon, better security for the payment thereof when the same should become payable in consequence of his having become insolvent (or "his credit having been publicly impeached," *as the case may be*), but the said letter was returned undelivered, because the said E. F., could not be found, wherefore I, the said Notary, at the request aforesaid, by this writing, do, in the presence of M. N. and O. P., witnesses, protest against the drawer of the said bill of exchange and the acceptor and all other parties thereto and all others concerned for all exchange, re-exchange, and all costs, damages and interest present and to come for want of better security for the payment of the said bill when due and payable.

M. N.,
O. P.,} *Witnesses*

Which I attest,
(Sd.) A. B.,
Notary Public.

Note—When after a bill is protested and before the protest is drawn up, it is accepted for honour, the protest should further state the name of the person by whom, and of the person, for whom, and the manner in which, such acceptance was offered and effected.

Appx. A.

VIII.

FORM OF NOTICE OF PROTEST TO DRAWER TO BE GIVEN BY A NOTARY PUBLIC.

(*See* SECTION 102).

Take notice that a bill of exchange for (*here state the amount*) drawn by you under date the on and payable at has been dishonoured by non-acceptance (or non-payment, *as the case may be*) and protested, and that you will be held liable thereon.

(Sd.) A.B.,
Notary Public.

IX.

FORM OF NOTICE OF PROTEST TO INDORSER TO BE GIVEN BY A NOTARY PUBLIC.

(*See* SECTION 102)

Take notice that a bill of exchange for (*here state the amount*) drawn by under date the on and payable at and bearing your indorsement has been dishonoured by non-acceptance (or non-payment, *as the case may be,*) and protested, and that you will be held liable thereon.

(Sd.) A.B.,
Notary Public.

X.

FORM OF NOTARIAL ACT OF DECLARATION HAVING BEEN MADE BY A PAYER FOR HONOUR.

(*See* SECTION 113).

On the day of 19 , I, A.B., a Notary Public appointed under the Indian Negotiable Instruments Act, 1881, of in (*here state the local area for which the Notary Public has been appointed*) in British India do hereby certify that the bill of exchange hereto annexed (or "a literal transcript whereof and of everything written or printed thereupon is hereto annexed") (now protested for non-payment) was this day exhibited to Y. Z. of in the $\frac{\text{Presidency}}{\text{Province}}$ of in British India (or to his agent in his behalf, *as the case may be*), who declared before me that he, the said Y.Z., would pay the amount of the said bill under protest for the honour of (*here insert the name of the party for whose honour the payment is to be made*), holding the said (*here insert the name of the party for whose honour the payment is to be made*) and the drawer and all other proper persons responsible to him, the said Y.Z., for the amount of the said bill and for all proper costs, interest, damages, and expenses. I have therefore, in the presence of M. N. and O. P., witnesses, granted this Notarial Act of honour accordingly.

M. N.,
O. P., } *Witnesses.*

Which I attest,
(Sd.) A. B.,
Notary Public.

APPENDIX B.

AGREEMENTS CONTROLLING NEGOTIABLE INSTRUMENTS.

How far contracts on negotiable instruments are affected by agreements either contemporaneous or subsequent is a question of some nicety. Such agreements may be either oral or written, and if written, the agreement may either be incorporated in the instrument itself or may be written on a separate piece of paper. Further, such written agreements may go to qualify the contract on the negotiable instrument, or may be one collateral to it. Though it is generally necessary that the agreement affecting the operation of the bill or note should be in writing, it has been held that is not necessary in pleading to aver that it is in writing. (*a*)

Oral agreement, not admissible.

Contracts on negotiable instruments are all written contracts, and as such are subject to ordinary rules relating to such contracts. Certainly, oral evidence is not admissible to vary, contradict, add to, or subtract from, its terms, unless the signing was on the distinct understanding that the contract on the instrument should not take effect as a contract, until some condition is fulfilled. That is to say, the instrument must have been delivered as an *escrow*, the separate oral agreement constituting the condition precedent to the attaching of any obligation under such contract. (*b*) Thus, in a suit on a promissory note payable on demand, no oral evidence is admissible to show that it is not to be payable until after the maker's death, (*c*) or until certain encumbrances had been discharged, (*d*) or that the note though on the face of it is payable on demand should not be enforced till after three years. (*e*) Nor in the case of a promissory note payable in fourteen days after date, can oral evidence be admitted to prove that it was not to be paid, if a verdict was obtained by third parties. (*f*) In like manner, the acceptor of a bill cannot set up a parol agreement inconsistent with the contract on the face of the instru-

(*a*) *Kearns* v. *Durell*, (1848) 18 L. J. C. P. 28.; see *Gillett* v. *Whitmarsh*, (1846) 8 Q.B. 966, 969; *Young* v. *Austen*, (1869) L. R. 4 C. P. 553, 557. But see, Bullen & Leake, (6th Edn.) p. 80, (note (b).)

(*b*) Sec. 46 *ante*; Ind. Evidence Act. sec. 92.

(*c*) *Woodbridge* v. *Spooner*, (1819) 3 B & Ald. 233; followed in *Stott* v. *Fairlamb*, (1883) 52 L. J. Q. B. 420; see *Bhogiram* v. *Kishori*, 50 All. 754.

(*d*) *V. R. Joshi* v. *G. K. Sathe*, 45 Bom. 1155.

(*e*) *Stott* v. *Fairlamb*, (1883) 52 L. J. Q. B. 420.

(*f*) *Foster* v. *Jolly*, (1835) 1 Cr. M. & R. 703.

Appx. B.

ment, such as, to pay a lesser sum than that mentioned in the instrument, (*a*) or to pay it in instalments. (*b*) It has further been held that it is no equitable defence to plead that the bill was wrongly dated and that according to the correct date, the bill was not matured, though such a plea may be open on the ground of fraud. (*c*) On the same principle, an oral agreement purporting to provide that the promise to pay on demand in a promissory note though absolute in its terms was not to be enforceable by suit, until the happening of a certain event, (*d*) or an agreement that delivery of possession of property was a condition precedent to the payment of money under a promissory note, (*e*) or that the legal obligation to perform the promise of payment was to be postponed, is not such an agreement as falls within the proviso 3 to section 92 of the Evidence Act. (*f*) That proviso does not permit the terms of a written contract to be varied by a contemporaneous oral agreement; but under it, a contemporaneous oral agreement to the effect that the written contract was to be of no force or effect at all, and that it was to impose no obligation at all until the happening of a certain event, may be proved. In an action on a bill of exchange payable three months after date by the indorsee against the acceptor, evidence as to a contemporaneous oral agreement between the drawer and the acceptor to renew the bill, if the acceptor was not in a position to pay at maturity was held not admissible, even though the indorsee was fixed with the notice of that agreement when he took the bill; (*g*) nor can an oral agreement be set up in an action on a promissory note to show that the principal was not intended to be repaid and that the note was given as a security for payment of interest during the life-time of the payee. (*h*) Where several persons make a joint promise in consideration of money paid to some of them, the contract is not without consideration with respect to the promise of others and it is not open to one of the executants who is liable according to the tenor of the note to prove a contemporaneous oral agreement with the promisee excluding liability. (*i*) Nor is a person who has signed a note as principal entitled to prove an oral agreement that it was

---

(*a*) *Besant* v. *Cross*, (1851) 10 C. B. 895.

(*b*) 9 C. W. N. (App.) 214.

(*c*) *Drain* v. *Harvey*, (1855) 17 C. B. 257.

(*d*) *Sri Ram* v. *Sobha Ram*, 44 All. 521; but see *Sheo Prasad* v. *Gobind Prasad*, 49 All. 464; *Ghanshiam Das* v. *Mithan Lal*, (1930) A. L. J. 1042.

(*e*) *Subramania* v. *Narayanasami*, 22 L. W. 445.

(*f*) *Ramjibun Serowgy* v. *Oghore Nath Chatterjee*, 25 Cal. 401; *Vishnu* v. *Ganesh*, 45 Bom. 1155; *Cohen* v. *The Bank of Bengal*, 2 All. 598.

(*g*) *New London Credit Syndicate Ltd.* v. *Neale*, (1898) 2 Q. B. 487.

(*h*) *Hill* v. *Wilson*, (1873) L. R. 8 Ch. App. 888, 898.

(*i*) *Sornalinga* v. *Pachai*, 38 Mad. 680.

intended he was to be liable as surety only. (*a*) In fact, it has been pointed out that the undertaking in a promissory note is unconditional, whereas the undertaking of a surety is conditional on the failure of another person to discharge his liability. There is therefore an essential antithesis between the position of a surety and that of the executant of a promissory note, and so the latter cannot in law be allowed to prove that he is merely a surety as against the payee of the promissory note. (*b*) In the case of a joint promissory note, the consideration to one of the joint promissors is legally sufficient to support the promise of all the joint promisors. (*c*)

Unless as a condition precedent.

Under proviso 3 to section 92 of the Evidence Act, as already remarked, oral agreement operating as a condition precedent to the arising of any obligation under the contract is admissible. The distinction to observe in such cases is that the matter sought to be proved by extraneous evidence must be a condition precedent and not one of defeasance. (*d*) In an action on a promissory note given in part-payment of goods supplied by the plaintiff to the defendant-company and indorsed at the request of the plaintiff by the defendant payee who was the president of the defendant company, an oral agreement contemporaneous with the promissory note to the effect that he was not to be called upon to pay if the goods supplied to the company should be unequal to sample, was held not to be admissible, it not being an agreement suspending the coming into force of the contract contained in the note but being an agreement in defeasance of that contract. (*e*) Evidence of oral agreement to defeat the operation of a contract on the happening of a certain event is not admissible. It has been held by their Lordships of the Judicial Committee that in a suit upon a promissory note executed by one Motabhoy and one Hyder Ali, payable on demand, a plea of an oral agreement by Motabhoy to the effect that on the arrival of a particular date, the advance made on the promissory note should be treated as the advance of the instalment promised to be paid by the plaintiff to Hyder Ali, the other executant of the plaint promissory note, on that date, and that the joint note should be replaced by a single acknowledgment on the part of Hyder Ali, or in other words that the liability under

---

(*a*) Ind. Contract Act, sec. 132, illus. *Narasimma Murthi* v. *Ramasami*, 24 M. L.J. 91; Contra *Maung Sein* v. *Ma Saw*, (1924) Rang. 360.

(*b*) *Behari Lal* v. *Allahabad Bank*, (1929) All. 664; *Central Bank of India* v. *Nadir Shah*, (1924) Sind 13; see the notes to sec 38, p. 185 *ante*.

(*c*) *Sornalinga* v. *Pachai*, 38 Mad. 680; *Fanendra* v. *Kacheman Bibi*, 45 Cal. 774, distinguishing *Nanak Ram* v. *Mehin Lal*, 1 All. 487.

(*d*) *Walter Mitchell* v. *A. K. Tennent*, 52 Cal. 677, 688.

(*e*) *Hitchings and Coulthurst Co.* v. *Northern Leather Co*, (1914) 3 K.B. 907.

Appx. B.

the suit note should be held as satisfied by a fresh note to be granted by Hyder Ali for the money then due on that date, was admissible, as proving the existence of a separate oral agreement as to a matter on which the document was silent and which was not inconsistent with its terms. (*a*) This case affords an interesting illustration of the wide scope for misapplication of the principle of section 92 of the Evidence Act. It is submitted that the decision goes too far and will have far reaching consequences and at that rate even a plea of instalment-payments, which is in effect a plea as to the mode of discharge on which a promissory note is certainly silent, may be countenanced, which plea so far as one can see has never been till now allowed to be raised with success. (*b*) The condition-precedent sought to be proved must be a condition as to "any obligation" whatsoever under the contract, and not as to some particular obligation which the contract may contain. Oral evidence is admissible to prove want or failure of consideration for the contract or to show fraud, (*c*) or to show that the contract has been discharged by release, payment or in any other way. (*d*)

Parol agreement about indorsement.

Whether the above principle of law excluding evidence of parol agreement is applicable to indorsements on negotiable instruments, is a point of controversy among text-writers. It is said that the contract of indorsement, is one implied by law, the full terms of the contract not appearing on the face of the instrument, and that therefore it can be qualified by express proof of a different agreement between the parties. This seems to be the view adopted by Byles, and he bases his opinion on the fact that the contract consists not only of the writing but also of the mutual understanding and intention with which the writing and delivery is made. (*e*) Hence, it is argued that an agreement at the time of indorsement and delivery may be proved by parol evidence. On the other hand, it is maintained that the indorsement is not merely an implied contract, but an express one, the terms being expressed in the body of the instrument. The only difference between the drawer and the indorser, as a general rule, is that the drawer is an originating drawer, signing usually on the face; and the indorser, a transferring drawer signing on the back. This

---

(*a*) *Motabhoy* v. *Mulji Haridas*, 39 Bom. 399 (P. C.); see also *Henderson* v. *Arthur*, (1907) 1 K. B. 10 (as to the admissibility of parol evidence of an agreement to take a bill in payment of rent); *Ponnusami* v. *Vellore Commercial Bank*, 38 M.L.J. 70.

(*b*) 55 M. L. J. (N.R.C.) 14.

(*c*) See the notes to secs. 43, 44 & 58 *ante*.

(*d*) *Morrs* v. *Baron & Co.* (1918) A. C. 1; *Motabhoy* v. *Mulji Haridas*, 39 Bom. 399 (P.C.).

(*e*) *Kidson* v. *Dilworth*, (1818) 5 Price 564; *Castrique* v. *Buttigieg*, (1865) 10 Moo. P.C. 94, expld in *Abrey* v. *Crux*, (1869) L. R. 5 C. P. 37, 42.

rule, however, is not extended to exclude parol evidence of a contemporaneous waiver of demand or notice or of failure of consideration or evidence of a special trust or fraudulent representation under which the indorsement came to be made. (*a*) Under the Indian law, the point has to be determined in the light of the words of section 92 of the Evidence Act. That section excludes evidence of an oral agreement varying etc., a written contract, only when the terms of such a contract have been reduced to the form of a document. In the case of indorsements, even taking the view advocated by Daniel, the contract of indorsement would be a document, only so much as is embodied in the body of the instrument. To that extent therefore, it may be said that it cannot be varied by parol evidence. But, the Law Merchant goes further and says that the indorser undertakes to pay the amount of the instrument if it is not to be paid according to its terms by the maker or acceptor, as the case may be. This undertaking can in no sense be said to be reduced to the form of a document so as to exclude evidence of parol agreement to vary it. (*b*) The liability of an indorser to the indorsee arises out of a contract between them; and this contract arises not merely out of the writing, *i.e.*, the indorsement, but also out of the delivery of the bill and the intention with which that delivery was made as evinced by the words, either spoken or written of the parties and other circumstances. (*c*) Evidence may be given to show that the order of the indorsements as they physically appear on the bill is not according to the intention of the parties, that is to say, evidence to qualify or invert the relationship of parties may be allowed. (*d*) Accordingly, in a case where the question was as to whether the contract that is implied by the indorsement included an acknowledgment of the full consideration and consequently no oral evidence could be adduced to prove that the consideration that passed was less, it was held that, as the contract between the indorser and indorsee (*i.e.*, the indorsement) contained no recital of consideration and although such indorsement implies a contract between the parties to it similar to the contract in the note, it could not amount to a contract in writing that the promise is to be performed in consideration of the receipt of the full consideration for the note, and that therefore section 92 of the Evidence Act was inapplicable. (*e*)

(*a*) Daniel, secs. 718 & 799.

(*b*) See Byles (19th Edn.) 102, 104; *Pike* v. *Street*, (1828) 1 M. & M. 226; 3 American Ruling cases, p. 954.

(*c*) *Castrique* v. *Buttigieg*, (1865) 10 Moo. P. C. 94; *Macdonald* v. *Whitfield*, (1883) 8 A. C. 733, 744; *Elliott* v. *Bax-Ironside*, (1925) 2 K. B. 301 (communications between the payee and indorsee admitted as such circumstance).

(*d*) *Mc Donald* v. *Nash*, (1924) A. C. 625; *National Sales Corpn.* v. *Bernardi*, (1931) 2 K. B. 188.

(*e*) *Ayyathurai* v. *Sivarama*, 32 I. C. 233; see the notes to sec. 35, p. 177, *ante*.

Appx. B.

Subsequent oral agreement.

As to any subsequent oral agreement rescinding or modifying any contract on a negotiable instrument, it is clear that such agreement is not admissible; for, all contracts on negotiable instruments are required by law to be in writing, and so any agreement rescinding or modifying it must also be in writing in order to be admissible. (*a*)

Of course, any fact having the effect of invalidating a document, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration or mistake in fact or law may be proved. (*b*)

Wirtten agreements.

Nextly as to written agreements; such agreements may be by way of memorandum inserted in the instrument contemporaneous with the drawing or making of it, or subsequent to the drawing or making of the instrument. Or again, it may be written on a distinct paper. These cases will have to be separately dealt with. If the agreement is written on the same document on which a negotiable instrument is drawn up, it is always a question of intention to be inferred from the language of the document as a whole whether the parties intended to control the operation of the negotiable instrument by such agreement. A memorandum on the face of an instrument is always to be taken as a part of the instrument, as the interpretation of an instrument ought to be governed by all that is found within its four corners. Daniel goes further and says that it is to be governed by everything expressed within the eight corners and so a memorandum on the back of the instrument is also a part of the instrument. (*c*) A memorandum on the instrument is presumed to be made at the time of the execution of the instrument. A memorandum of an agreement may be written on the paper embodying the instrument itself, but it may not control the operation of the instrument if the intention of the parties be to that effect. If the memorandum makes the payment contingent, then it governs the instrument; (*d*) but if it is only directory, (*e*) or if it is intended merely to identify the instrument or to correct an error, it does not operate to control the effect of the instrument. It is necessary, however, that the memorandum annexed to the signature must be clear and unambiguous. So, a marginal note in a promissory note payable on demand to the effect that it is due on a certain date unaccounted for will not control the effect of the instrument.

(*a*) Ind. Evidence Act, sec. 92.

(*b*) See the notes to secs. 43, 44, 45, & 58 *ante*.

(*c*) Daniel, sec. 150.

(*d*) *Leeds* v. *Lancashire*, (1809) 2 Camp. 205; *Hartley* v. *Wilkinson*, (1815) 4 Camp. 127; *Stone* v. *Metcalfe*, (1815) 4 Camp. 217; *Fitch* v. *Jones*, (1855) 5 E. & B. 238.

(*e*) *Chunder Kant* v. *Kartick Chunder*, 5. B. L. R. 103; see *British Trade Corporation*, In re (1932) 2 Ch. 1. (memo not in the body of the document, is not part of the actual terms of the contract).

Inserted subsequently.

If the memorandum is inserted after the instrument is perfected and delivered, it is not generally considered as a part of the instrument though it may be on the same piece of paper. (*a*) But, if such memorandum is inserted with the consent of the parties, it will control the operation of the instrument as a subsequent agreement. If it is inserted without the consent of one of the parties, it will be an alteration, if it varies the instrument.

Or contemporaneously.

As between the original parties to a bill, it is clear that the effect of a bill can be controlled by a written contemporaneous agreement. Thus, where in a suit by a bank, on a promissary note, it was proved that it was customary for the bank to fix a period of payment, and that in the application form for loan, the defendant put in the words "a month's *thavanai*," which were repeated by the officer of the bank in his indorsement, it was held, that the application form, the indorsement and the note formed part of the same transaction and must be taken together. (*b*) In such cases, the bill and the writing are taken to be one contract, for, in as much as there are two written agreements uncancelled between the same parties, the two ought to be so construed, if possible, as not to conflict with each other. (*c*) But, if the agreement be merely collateral, it only affords ground for a cross-action and not as a defence to an action on the bill, (*d*) for an agreement though contemporaneous may be collateral. It is always a question of intention between the parties to be determined from the circumstances under which the writing comes into existence, such as, whether the agreement is with third parties as well or whether it is inconsistent with the terms of the main document. (*e*) For example, if the effect of such agreement be to make the amount mentioned in the promissory note uncertain, the promissory note will not be a valid one. (*f*) The very fact that it was thought necessary by the parties that the two agreements should be evidenced by two separate documents is *prima facie* evidence against the view that the parties intended them to be read together. (*g*) It may be that the parties intended to have separate documents, because the contemporaneous agreements should operate only between themselves and not affect any third person. The circumstances under which the transac-

Separate written agreement.

(*a*) *Stone* v. *Metcalfe*, (1815) 4 Camp. 217.

(*b*) *Ponnusami* v. *Vellore Commercial Bank*, 28 M. L. J. 70.

(*c*) *Woodbridge* v, *Spooner*, (1819) 3 B. & Ald. 233 ; see also 55 M. L. J. (N. R. C.) 14 ; *Bhokiram* v. *Kishori*, 50 All. 754.

(*d*) *Maillard* v. *Page*, (1870) L.R. 5 Ex. 312 ; *McManus* v. *Bark*, (1870) L.R. 5 Ex. 65.

(*e*) *Simon* v. *Hakim Mahomed*, 19 Mad. 368, 372 ; *Webb* v. *Spicer*, (1849) 13 Q. B. 894. 899 ; Cf. *Maillard* v. *Page*, (1870) L.R. 5 Ex. 312, 319.

(*f*) *Stott* v. *Fairlamb*, (1883) 52 L. J. Q. B. 420.

(*g*) *Simon* v. *Hakim Mahomed*, 13 Mad. 368, 372.

Appx. B.

tion took place should be scrutinised, and the fact that the agreement containing qualifying provisions was entered into subsequently to the execution of the instrument or that the promisee refused to the qualifying provisions being embodied in one document (*a*) will strengthen the view that the agreement is only collateral.

Covenant to renew.

Such written agreements may be for the renewal of the negotiable instrument or restraining or suspending the right to sue on the instrument. If the agreement is collateral, it cannot be pleaded as a bar to an action on the instrument, though a separate action can be maintained for breach of the contract. Promissory notes often accompany other securities, such as mortgages, as affording a speedy remedy in case of default. They may be valid and binding, though the instrument which they accompany be not so (*b*) ; when a promissory note is given to accompany a mortgage as further security, the mortgagee is not entitled to sever the two, and the Court would, if necessary, issue an injunction to restrain him from so doing. (*c*) But, if indorsed away, even though in breach of trust, that would be no defence against a holder in due course. (*d*) If there is an agreement to renew, the application for renewal must be made within a reasonable time of the maturity of the original instrument, but it need not be made before its maturity. (*e*) An agreement to renew without more is an agreement to renew once only. (*f*) The party is not bound to apply during the currency of the bill. (*g*) A substituted bill is, in general, held under the same rights as the one it replaces. (*h*) With reference to agreements restraining or suspending the right to sue on an instrument, a distinction has been drawn in England between a covenant not to sue generally and a covenant not to sue for a limited time. If the effect of an agreement is to extinguish the right of suit, as in the case of a covenant not to sue generally, it can be pleaded as a bar to an action. But, if the effect of the agreement is only to suspend the right of action, it cannot be so pleaded, though a separate action may be maintained for the breach of such agreement. But, if the agreement not to sue for a limited time, contains a condition that the original instrument is rendered void by

Or not to sue at all.

Or not to sue for a limited time.

(*a*) *Somasundaram* v. *Narasimha*, 29 Mad. 212, 216.

(*b*) *Monetary Advance Co.* v *Cater*, (1888) 20 Q. B. D. 785.

(*c*) *Walker* v. *Jones*, (1865) L. R. 1 P. C. 50.

(*d*) *Glasscock* v. *Balls*, (1889) 24 Q. B. D. 13.

(*e*) *Maillard* v. *Page*, (1870) L. R. 5 Ex. 312; *Torrance* v. *Bank of British North America*, (1873) L. R. 5 P. C. 246.

(*f*) *Innes* v. *Munro*, (1847) 1 Ex. 473.

(*g*) *Malliard* v. *Page*, (1870) L. R. 5 Ex. 312.

(*h*) *Lee* v. *Zagury*, (1817) 8 Taunt 114; *Mascarenhas* v. *The Mercantile Bank*, 56 Bom. 1 (P.C.).

breach of the agreement, then it may be pleaded, because it operates as a conditional release. (*a*) Therefore, in England, a covenant not to sue for a limited time does not suspend the right of action, and a holder or payee can sue on a negotiable instrument in spite of such a covenant. (*b*) Even at Common law, if the parties by their own covenants stipulate that such a contract is pleadable in bar in the event of an action brought, it then operates as a defeasance which may be pleaded in bar. (*c*) This principle is not extended to cases where there is a release of the party bound with a provision, however, that on breach of a certain condition the release shall be void, and it has been held that such release can be pleaded in bar. (*d*) This rule is based upon the technicalities of English Common law procedure, and it is submitted that it will not be applicable to India. Even in England, "such a contract would have been a defence on equitable grounds, for, in Chancery the breach of an express negative promise is usually restrainable by a perpetual injunction. * * * * It is now, however, a good defence under the Judicature Act, 1873, section 24, sub-section 5, which expressly provides that every matter of equity on which an injunction against the prosecution of proceedings might have been obtained before that Act, either unconditionally, or on any terms or conditions, may be relied on by way of defence thereto. (*e*) But, the Madras High Court had, however, held following the decision of English Courts, that such a covenant is not pleadable in bar of an action. Where the maker of a note entered into an agreement with the payee of it that the amount due under the promissory note is to be liquidated by fortnightly consignment of goods to be sent by the maker to the payee; or where the payee of a promissory note entered into an agreement that "I shall take the amount due under the promissory note after giving maintenance to my mother-in-law," the payee in the one case, (*f*) and the indorsee with the notice of the agreement in the other, (*g*) was held entitled to sue at once, as a covenant to sue for a limited time does not suspend the right of action. The above cases have been re-considered by a Full Bench of the Madras High Court, and it has been held that a covenant not to sue for a

---

(*a*) *Foley* v. *Fletcher*, (1858) 3 H. & N. 777.

(*b*) *Thimbleby* v. *Barron*, (1838) 3 M. & W. 210, 216; *Salmon* v. *Webb*, (1852) 3 H. L. C. 510; Cf. *Gibbons* v. *Vouillon*, (1849) 8 C. B. 483; *Ford* v. *Beech*, (1848) 11 Q. B. 852, 867.

(*c*) *Gibbons* v. *Vouillon*, (1849) 8 C. B. 483; *Legg* v. *Cheeseborough*, (1859) 28 L. J. C. P. 209; *Walker* v. *Nevill*, (1865) 34 L J. Ex. 73.

(*d*) *Newington* v. *Levy*, (1870) L. R. 5 C. P. 607.

(*e*) Smith's Leading Cases (13th Edn.) Vol I. 392.

(*f*) *Simon* v. *Hakim Mahomed Sheriff*, 19 Mad. 368.

(*g*) *Somasundaram* v. *Narasimhachariar*, 29 Mad. 212.

limited time may be pleaded in bar to an action brought in contravention of the same. (*a*)

It is to be noticed that these agreements, if they have any operation at all, will only affect the immediate parties to such agreement and any other person who becomes a party to the instrument with notice of such agreement. A holder in due course is never prejudiced by an agreement between the prior parties.

(*a*) *Annamalai* v. *Velayuda*, 39 Mad. 129 (F.B.); see also *Ponnusami* v. *Vellore Commercial Bank*, 38 M. L. J. 70; *Shaikh Imam* v. *Ishak Ali*, 10 I. C. 734 *Cf.* Art. 73 of the Limitation Act.

APPENDIX C.

PAYMENTS BY BILLS, NOTES AND CHEQUES.

Payment by bill, etc., presumed conditional.

It is always a question of intention of parties whether a bill or note taken on account of a debt operates as an absolute discharge of the debt or only as a conditional payment of it. Generally speaking, a bill or note can never go in discharge of a debt, unless it is part of the contract that it shall be so; for a mere promise to pay cannot be regarded as an effective payment. This rule is also based on the general principle of law that one simple executory contract does not extinguish another, for which it is substituted. (*a*) The presumption in such cases is that the bill or note is taken only as a conditional payment, (*b*) though it is said that in some American States the rule is otherwise. (*c*) The Courts in India have adopted this rule that the giving of a note, bill or hundi *prima facie* operates only as conditional payment and that the *onus* is upon the party affirming the contrary to show that the parties intended otherwise. (*d*) This rule is equally applicable whether the debt for which a negotiable instrument is taken is a pre-existing debt or one contemporaneous with the transaction. In the latter case, there seems to be some difference among the American authorities, for, Parsons says: "We can hardly conceive of a bill being taken, unless it be the understanding of the parties to regard it as payment. (*e*) But Story is of a different opinion, and Daniel seems to be inclined to agree with Parsons. (*f*) It is always a question of fact as to what the parties intended by the transaction, (*g*) the onus being on the party alleging that the bill operated as a complete satisfaction of the original debt, the presumption of fact being the other way. (*h*) If the intention is expressed in the instrument

---

(*a*) Daniel, sec 1260.

(*b*) *Maillard* v. *Argyle*, (1843) 6 M. & Gr. 40; *Bottomley* v. *Nuttall*, (1858) 28 L.J.C.P. 110; In re *Romer and Haslam*, (1893) L. R. 2 Q. B. 286; *Allen* v. *Royal Bank of Canada*, 95 L. J. C. P. 17; *Gopala* v. *Rajagopal*, (1926) M. W. N. 757; *Punjab National Bank* v. *Tajamel Hussain*, 49 All, 257; *Hakim Roy* v. *Ganga Ram*, 7 Lah. 206; *Paramanand* v. *Gokul Chand*, 7 Lah. 113; *Ebrahim* v. *Chas Chowie & Co*, 8 I.C. 967, (F.B.)

(*c*) Chalmers (10th Edn.) 366.

(*d*) *Jambu* v. *Palaniappa*, 26 Mad. 526; *Dargavarapu Sarrapu* v. *Rampratapu*, 25 Mad. 580; *Cullianji* v. *Raghowji*, 30 Bom. 27; *Palaniappa* v. *Arunachellam*, 21 M. L. J. 32; *Imperial Bank of India* v. *Avanasi*, 59 M. L. J. 513; *Moti Lal* v. *The Unao Commercial Bank Ltd*, 59 M. L. J. 661 (P. C.).

(*e*) Cf. *Kishan Sarup* v. *Tarachand*, 29 I. C. 887.

(*f*) Daniel, sec. 1261.

(*g*) *Goldshede* v. *Cottrell*, (1836) 2 M. & W. 20; *Jambu* v. *Palaniappa*, 26 Mad. 526, 528; *Cullianji* v. *Raghowji*, 30 Bom. 27, 36; Benjamin, on Sales (5th Edn.) 781.

(*h*) *Sibree* v. *Tripp*, (1846) 15 M. & W. 23; *Bottomley* v. *Nuttall*, (1858) 28 L. J. C. P. 110.

Appx. C.

itself, there can be no question. When it is not so expressed, the intention is to be gathered from all the circumstances attending the transaction. If, from the circumstances of the case, an agreement of absolute payment can be implied, the right of action on the debt will be destroyed, and no remedy will be left to the creditor except that on the instrument, so much so, that it has been held that the original note ceases to be in force even as against the original joint executant, if he did not join in executing the fresh note. (*a*) Thus, where the creditor is offered cash, but prefers to take a bill, it has been held that the intention was to discharge the debt absolutely. (*b*) It may also be inferred from a comparative high rate of discount that the person taking the instrument is to have the risk if the drawee or some other person becomes insolvent and that the taking of the bill is in discharge of the debt. (*c*) But, the mere passing of the receipt for "payment in full" (*d*) or "in satisfaction" or the delivery of the old bill, (*e*) or an indorsement of receipt on the note itself (*f*) for which the new one was substituted, will not alone show that absolute payment was intended; but, where the receipt states that the prior liability has been satisfied and there is no further claim, no suit will lie on the original consideration. (*g*) Even the fact of negotiation of the instrument does not show that the instrument was taken as absolute payment, for such negotiation is equally consistent with its having been taken as conditional or absolute payment. (*h*) The giving of an additional security is not decisive, though it may go to confirm the inference of an absolute payment when there is other evidence in the case. (*i*)

Payment, by bill of a third person.

The case is slightly different if a person gives in payment a bill or note of a third person. If the stranger's note or bill is one passable by delivery and is transferred unindorsed in payment of a contemporaneous debt, there seems to be strong reason for presuming that the transaction was in absolute discharge of the debt, for, if a man gives a bill payable to bearer for a debt not due already, it is deemed a sale of the bill. (*j*) The very fact of not indor-

---

(*a*) *Periannan* v. *Kudupoody Mallaya*, 51 I. C. 577.

(*b*) *Anderson* v. *Hilles*, (1852) 12 C.B. 499; *Marsh* v. *Pedder*, (1815) 4 Camp. 257; *Robinson* v. *Read*, (1829) 9 B. & C. 449, 455; *Baillie* v. *Moore*, (1846) 15 L. J. Q. B. 169; *Smith* v. *Ferrand*, (1827) 7 B. & C. 19.

(*c*) *Jambu* v. *Palaniappa*, 26 Mad. 526.

(*d*) *Stedman* v. *Gooch*, (1793) 1 Esp. 45; *Palaniappa* v. *Arunachellam*, 21 M. L. J. 432.

(*e*) Daniel, sec. 1266 (a).

(*f*) *Palaniappa* v. *Arunachellam*, 21 M. L J. 432.

(*g*) *Rahamatullah* v *Ganesh Das*, 82 P. R. 1891.

(*h*) *Jambu* v. *Palaniappa*, 26 Mad. 526; Cf. *Subramanian* v. *Muthia*, 35 Mad. 639.

(*i*) *Ibid.*

(*j*) Daniel, sec. 1264; Byles (19th Edn.) 172; *C. F. Camidge* v. *Allenby*, (1827) 6 B. & C. 373, 385.

sing the bill is an indication that the party is not willing to take the risk on himself. This does not, however, preclude the parties from contracting that the transferor should be liable in case of dishonour. But, if the bill or note even of a third party is given either indorsed or unindorsed in payment of a pre-existing debt, or if it is given indorsed in payment of a contemporaneous debt, the general presumption of conditional payment will still apply.

If the creditor takes a fresh security or a separate bill or note from one of several partners, who are already his debtors or parties to a bill or note or otherwise, it will ordinarily have the effect of discharging the other co-partner; (*a*) but he may reserve his right against the others, (*b*) so that he might resort to his remedy against them, if the security taken proves unproductive.

Taking bill etc.

Either destroys original debt.

What is the effect of taking a bill or note for or on account of a debt? When from the circumstances of the case, an agreement to take the instrument in absolute payment of the debt is found, or implied, then the right of the creditor on the original debt is extinguished, and the only remedy left to him is that upon the instrument itself. (*c*) It does not matter in such a case that the bill or note given in satisfaction is not negotiable. (*d*) If the instrument given is invalid for want of stamp, (*e*) or if it turns out to be a forgery, or if the debtor knew of the insolvency of one or more of the parties to the bill at the time of transfer, (*f*) or if it is void owing to a material alteration, (*g*) the creditor does not lose his right of action on the original debt by the mere fact of his having taken the instrument as absolute payment of the debt. In such cases, the creditor is entitled to recover the debt even before the maturity of the instrument. But, it has been held that when a judgment creditor accepted a bill for the amount of the debt, it operates as an agreement not to enforce that debt, not only during the currency of the bill but also afterwards, notwithstanding dishonour, so long as the bill is outstanding in the hands of a third

---

(*a*) *Thompson* v. *Percival*, (1834) 5 B. & Ad. 925.

(*b*) *Bedford* v. *Deakin*, (1818) 2 B. & Ald. 210.

(*c*) *Cowasjee* v. *Thompson*, (1845) 5 Moo. P. C. 165; Cf. *Bolye Chand* v. *Moulard*, 4 Cal. 572; *Sard* v. *Rhodes*, (1836) 1 M. & W. 153; *Kodali Mallaya* v. *Tangoppala Ramayya*, 21 M. L. J. 462; *Subramanian* v. *Muthaya*, 35 Mad. 639; *McDowall* v. *Boyd*, (1848) 17 L. J. Q. B. 295.

(*d*) Cf. *Lewis* v. *Lyster*, (1835) 2 C. M. & R. 704, 706.

(*e*) *Cundy* v. *Marriott*, (1831) 1 B. & Ad. 696; *Nathusa* v. *Phulchandsa*, 14 I. C. 399; *People's Bank of India* v. *Abdul Karim*, 14 I. C. 512; *Rahmat Ali* v. *Dewa Singh*, 4 Lah. 451.

(*f*) Chitty on Contracts (14th Edn.) 643; Cf. *Camidge* v. *Allenby*, (1827) 6 B. & C. 373, 375; *Peacock* v. *Pursell*, (1863) 14 C. B. N. S. 728.

(*g*) *Sutton* v *Toomer*, (1827) 7 B. & C. 416; see *Sloman* v. *Cox*, (1834) 1 Cr. M. & R. 471. See *McDowall* v. *Boyd*, (1848) 17 L. J. Q. B. 295.

Appx. C.

person to whom it has been indorsed for value by the creditor. (*a*) So also, where a hundi is drawn by way of renewal of and in substitution for an accepted hundi, the substitution has been held to be conditional on the substituted hundi being accepted by the drawee. If that is not so accepted, the condition is unfulfilled, and the original accepted hundi remains in full force as against the acceptor who is liable to be sued thereon. (*b*)

Or suspends action on original debt.

The general effect of taking an instrument as conditional payment is to suspend the right of action on the original debt during the currency of the instrument. (*c*) Thus, it is a good defence in an action for the recovery of the debt to plead that the plaintiff has taken a bill or note from the debtor on account of the debt. (*d*) But the original debt is not extinguished, for it revives on the dishonour of the instrument given in satisfaction of the debt. (*e*) After such dishonour, the creditor at his option may sue his debtor, either on the original consideration, or on the dishonoured instrument. In such a case, it seems " that the debt which was conditionally paid may be treated as subsisting throughout. Conversely, when the bill or note is duly honoured, the payment dates from the date of the receipt of the bill or note." (*f*) Of course, exception is made in cases where the instrument is void or of no effect on account of want of stamp or of forgery, where the creditor will be entitled to sue without waiting for the maturity of the instrument. (*g*)

Production of bill, etc., when suing on original debt.

However, the creditor when suing on the original cause of action will be required to produce the bill or note given on account of the debt, (*h*) or he must at least show that the instrument has been destroyed, (*i*) or has got back into the hands of the debtor himself; for, if the bill or note is outstanding in the hands of a third person, the debtor will have to pay again to the holder of the instrument. (*j*) So, if it is proved at the trial that the creditor has negotiated the bill to

---

(*a*) *A. Debtor*, In re, *The Debtor*, Ex parte (1908) 1 K. B. 344.

(*b*) *Motilal* v. *The Unao Commercial Bank*, 59 M. L. J. 661. (P.C.)

(*c*) See *Saminathan* v. *Palaniappa*, 18 C. W. N. 617 (P.C.); *Ebrahim* v. *Chas Cowie and Co.* 8 I. C 967.

(*d*) *James* v. *Williams*, (1845) 13 M. & W. 828; *Simon* v. *Lloyd*, (1835) 2 C.M. & R. 189; Ex parte *Matthew*, (1884) 12 Q.B. 506; *Belshaw* v. *Bush*, (1857) 11 C. B. 191, 206.

(*e*) *Dargavarpu Sarrapu* v. *Rampratapu*, 25 Mad. 580; *Jambu* v. *Palaniappa*, 26 Mad. 526; *Kuttayan* v. *Palaniappa*, 27 Mad. 540; *Alexander Stewart* v. *Delhi and London Bank, Ltd.*, 17 W.R. 201; *Somarimull* v. *Bhairo Das*, 7 B. L. R. 431 (note); *Subramanian* v. *Muthia*, 35 Mad. 639; *Punjab National Bank* v. *Tajmal*, 49 All. 257.

(*f*) Chalmers (10th Edn.) 364; Cf. *Cohen* v. *Hale*, (1878) 3 Q. B. D. 371; Re *London and Birmingham Bank*, (1865) 34 L. J. Ch. 418.

(*g*) Chitty on Contracts (14th Edn.) 643.

(*h*) *Ibid*, 646.

(*i*) See *Ramuz* v. *Crowe*, (1847) 1 Ex. 167.

(*j*) Chitty on Contracts (14th Edn.) 646.

a third person, that will in itself be a bar to the action on the original consideration. (*a*) If the negotiable instrument given in satisfaction be lost, before or after it is due, by the creditor, so that it cannot be produced at the time of the trial, that itself will be a fatal objection to an action on the original consideration or on the instrument ; (*b*) but if the instrument given is one not negotiable, the interest of the debtor does not require the production of the bill, and in such a case the creditor may sue notwithstanding the loss. (*c*) Even in the former case, under Order VII, Rule 16 of the Civil Procedure Code, the Courts may pass a decree on an indemnity being given by the plaintiff. (*d*)

Suit on a lost note.

It is enough in the first instance for the defendant-debtor to plead in an action on the original debt that a bill or note payable to a third person or his order or to bearer or made by a third person, was given for and on account of the debt. Then it is for the plaintiff to show that the instrument was overdue and remained unpaid. But " an allegation that the negotiable instrument was given for and on account of the debt by which the defendant promised to pay to the plaintiff or order, a sum of money will not be a good answer, unless it states further, either that such instrument is still running or that it has been indorsed over by the plaintiff." (*e*)

Onus.

If a negotiable instrument is taken on account of a pre-existing or a contemporaneous debt, the holder must do all that the law requires to be done in order to secure payment of the amount, such as, presentment in reasonable time for acceptance or payment or giving notice of dishonour. (*f*) A distinction has, however, to be observed in such cases. When the debtor is the drawer or an indorser of the instrument, that is, a party secondarily liable, the creditor is bound to take steps necessary to obtain payment of money and to preserve the rights of the debtor, and if he does not do so, the debtor is discharged not only from his liability on the bill or note but also from that on the original debt. But, in the case of an acceptor of a bill or the maker of a note who makes or accepts the instrument on account of a debt, the question of presentment and notice of dishonour does not arise, as he

Creditor's duties on taking bill, etc.

(*a*) *Davis* v. *Reilly*, (1898) 1 Q. B. 1 ; *Hadwen* v. *Mendisabal*, (1825) 2 C. & P. 20 ; *Price* v. *Price*, (1844) 16 M. & W. 232, 241 ; Cf. *National Savings Bank* v. *Tranah*, (1867) L. R. 2 C. P. 356 ; Re *A Debtor*, (1908) 1 K. B. 344, 350 ; *Jambu* v. *Palaniappa*, 26 Mad. 526, 530; *Subramanian* v. *Muthia*, 35 Mad. 639 ; *Ram Narain* v. *Lachmi*, 60 I. C. 385.

(*b*) *Crowe* v. *Clay*, (1854) 9 Ex. 604.

(*c*) *Wain* v. *Bailey*, (1839) 10 A. & E. 616.

(*d*) Act V of 1908 ; Cf. Sec. 81 *ante*.

(*e*) Chitty on Contracts (14th Edn.) 642 ; *Price* v. *Price*, (1847) 16 M. & W. 232, 241.

(*f*) *Peacock* v. *Purssell* (1863) 14 C. B. N. S. 728 ; *Ramzan & Co.* v. *Shariff Mahomed*, 76 I. C. 578.

Appx C.

is the party primarily liable upon the instrument. (*a*) If the debtor indorses a bill on account of the debt and the holder omits to give notice on its dishonour, he cannot sue him for the debt any more than on the bill. (*b*) If the debtor makes an order upon his banker for the payment of the debt, and the creditor accepts and keeps it in his hands for an unreasonable length of time, the debtor is discharged on account of the *laches* of the creditor. (*c*) If the debtor is the acceptor of a bill or hundi, he is in law entitled to no notice of dishonour and hence will not be discharged for the want of it, (*d*) though in some cases, keeping the bill for an unreasonable length of time without presenting it for payment may be held to be evidence that the creditor accepted it by way of payment and satisfaction of the debt. (*e*)

Suit on the original debt.

In general, where the debtor is not a party to the instrument, it seems the creditor may on dishonour sue on the original cause of action without proving either presentment for payment or notice of dishonour to the parties liable on the instrument or to the debtor himself. (*f*) The same rule will apply, if the bill or note given in satisfaction is not negotiable. (*g*)

Bill, etc., as collateral security.

When a bill or note is given as a collateral security, the creditor's remedy to sue on the original cause of action is not suspended. He may prosecute his suit on the original cause of action even during the currency of the bill, but he is not on that account relieved from the liability to use due diligence in collecting the money. (*h*) If the creditor had a better remedy or a higher security for the amount of the debt, the taking of a bill or note does not raise any presumption of its being taken up either as unconditional or absolute payment, for, it cannot be said that the creditor intended to part with the higher security or the better remedy by the taking of the instrument. (*i*) So also, if two partners are indebted on a partnership account, and one of them alone gives a negotiable instrument for the debt, the other partner will still continue to be liable on the original debt, unless it be shown that the

---

(*a*) *Dargavarapu* v. *Rampratapu*, 25 Mad. 580; *Camidge* v. *Allenby*, (1827) 6 B. & C. 373; *Peacock* v. *Pursell*, (1863) 14 C. B. N. S. 728.

(*b*) *Bridges* v. *Berry*, (1810) 3 Taunt 130; *Wegg-Prosser* v. *Evans*, (1895) 1 Q. B. 108.

(*c*) *Hopkins* v. *Ware*, (1869) L. R. 4 Ex. 268; *Lichfield Union* v. *Greene*, (1857) 26 L. J. Ex. 140; Addison on Contracts (10th Edn.) 143

(*d*) *Kuttayan* v. *Palaniappa*, 27 Mad. 540. [The facts, however, are not clear.]

(*e*) Addison on Contracts (10th Edn.) 143.

(*f*) Chitty on Contracts (14th Edn.) 644; *Goodwin* v. *Coates*, (1832) 1 Moo. & Rob. 221; *Swinyard* v. *Bowes*, (1816) 5 M. & S. 62.

(*g*) *Plimley* v. *Westley*, (1835) 2 Bing. N. C. 728.

(*h*) *Peacock* v. *Purssell*, (1863) 14 C. B.N.S. 728; *Hakim Rai* v. *Ganga Ram*, 7 Lah. 206.

(*i*) *Belshaw* v. *Bush*, (1851) 11 C. B. 191, 206; *Palmer* v. *Bramley*, (1895) 2 Q.B. 405 (C. A.).

creditor intended to substitute the liability of one for the liability of both. (*a*)

Renewal, effect of.

When a bill is taken in renewal of a former bill and the holder retains such former bill, the renewal operates only as a conditional payment thereof in the absence of a special agreement. (*b*) If the new bill be paid in due course or otherwise discharged, the original bill is likewise discharged, (*c*) but on dishonour of the new bill, the liabilities of the parties to the original bill revive and a suit can be laid thereon. (*d*) Renewing a bill may operate as an extension of the time for paying it. So that, if a bill be renewed without the assent of all the parties liable thereon as sureties, the parties so liable are discharged. (*e*) The new bill will be subject to the same conditions as the original bill. (*f*) The holder cannot maintain an action on the new bill, if he could not have maintained an action on the original bill, either because there was no consideration for it (*g*) or because the consideration was illegal (*h*) or because he was privy to some fraud connected therewith. (*i*) If the second bill be discharged by an alteration, an action may be brought on the first. (*j*)

Negotiable instrument for lesser sum.

Where there is a disputed liability, it may be compromised by the payment of a lesser sum than that claimed, but the general rule of law is where a liquidated sum is due, it cannot be discharged by the payment of a smaller sum, for, there will be no consideration for the creditor's promise to forego the balance. (*k*) But, by a curious refinement of law, it has been held that a liquidated debt may be discharged by the acceptance, in satisfaction, of a negotiable security for a lesser sum, even if the debtor himself be the only person liable on the instru-

---

(*a*) *Dargavarapu* v. *Rampratapu*, 25 Mad. 580, 583; *Bedford* v. *Deakin*, (1818) 2 B. & Ald 210, 217.

(*b*) *Lumley* v. *Musgrave*, (1837) 4 Bing. N. C. 9, 15; *Sunder Das* v. *Puran Singh*, 11 P. W. R. 1922; *Kendrick* v. *Lomex*, (1832) 2 Cr. & J. 405.

(*c*) *Dillon* v. *Rimmer*, (1822) 1 Bing. 100; Cf. *Soward* v. *Palmer*, (1818) 2 Moore, 274.

(*d*) Ex parte *Barclay*, (1802) 7 Ves. 596; *Norris* v. *Aylett*, (1809) 2 Camp. 320; *Fenton* v. *Blackwood*, (1874) L. R. 5 P. C. 167.

(*e*) *Gould* v. *Robson*, (1807) 8 East. 576; *Petty* v. *Cooke*, (1871) L. R. 6 Q. B. 790, 794; *Goldfarb* v. *Bartlett*, (1920) 1 K. B. 639.

(*f*) *Mather* v. *Maidstone*, (1856) 18 C. B. 273; *Flight* v. *Reed*, (1863) 1 H. & C. 703.

(*g*) *Southall* v. *Rigg*, (1851) 11 C. B. 481; Cf. *Edwards* v. *Chancellor*, (1888) 52. L. J. C. P. 454.

(*h*) *Chapman* v. *Black*, (1819) 2 B. & Ald. 588; *Wynne* v. *Calander*, (1826) 1 Russ. 293; *Hay* v. *Ayling*, (1851) 16 Q. B. 423; see *Preston* v. *Jackson*, (1817) 2 Stark 237, (unless the amount be reduced by excluding so much of the consideration for the original bill as was illegal.)

(*i*) *Lee* v. *Zagury*, (1817) 8 Taunt. 114; *Bell* v. *Gardiner*, (1842) 11 L. J. C. P. 195 (renewal of altered bill).

(*j*) *Sloman* v. *Cox*, (1834) 1 Cr. M. & R. 471.

(*k*) *Foakes* v. *Beer*, (1884) 9 A. C. 605 (H.L.).

Appx. C.

ment. (*a*) If a cheque for a smaller sum be sent in settlement of a larger sum, it is open to the creditor not to accept it in satisfaction, even though he does not return it and he may then sue for the balance; (*b*) but in a case where the father of a debtor wrote to the creditor offering an amount less than that of the debt, in full settlement of the debt due and enclosing a draft for that amount, and where the creditor cashed and retained the proceeds and afterwards brought an action for the balance, it was held that he must be taken to have accepted the amount on the terms upon which it was offered, and hence he could not maintain an action for the balance. (*c*)

(*a*) *Sibree* v. *Tripp*, (1846) 15 M. & W. 23; *Goddard* v. *O'brien*, (1882) 9 Q. B. D. 37; *Bidder* v. *Bridges*, (1887) 37 Ch. D. 406.

(*b*) *Day* v. *McLea*, (1889) 22 Q. B. D. 610, 613.

(*c*) *Hirachand* v. *Temple*, (1911) 2 K. B. 330 (C. A.); see *Henderson* v. *Stobart*, (1850) 5 Ex. 99; *Thompson* v. *Percival*, (1834) 5 B. & Ad. 925.

APPENDIX. D.

SUITS ON NEGOTIABLE INSTRUMENTS.

Suits by holder.

By agent.

Any holder of a negotiable instrument can sue all the prior parties to the instrument in his own name for the recovery of the money due under it. (*a*) The suit may be brought by a person as agent of the holder authorised by him in that behalf. In such cases, the usual thing to do is for the holder to hand the instrument, if payable to bearer, to a third person or to indorse it to him if specially indorsed, in order to constitute him his agent for the purpose of suing on it. A ratification, even after a suit is brought, of the action of the agent by the principal holder has been held to be good. (*b*) An indorsee of a bill as trustee for a third party is also entitled to sue on the bill. The original payee can maintain a suit on the instrument when returned to him, by striking off the indorsement, even though there is no re-indorsement to him by the indorsee. (*c*) If there is a special indorsement in favour of a particular person, he is the proper person to sue upon the instrument, and not any other person who claims to be the real owner or to be beneficially interested in the money due under the instrument. (*d*) So, a minor cannot sue on a promissory note payable to order taken in the name of his guardian, though it is taken for the benefit of the minor ; (*e*) nor can a *cestui que trust* sue on a bill or note taken by the trustee in the name of himself, nor can the shebait of an idol, to which through its pujari a promissory note was handed over by the payee without indorsement, sue on the note. (*f*) On the same principle, if a bill or note is taken in the name of one of the partners, the firm cannot sue on such instrument, though it may have been for partnership purposes. (*g*) A member of a joint Hindu family can sue on a negotiable instrument taken in his own name without joining

By beneficiary.

By member of joint Hindu family.

(*a*) *Voleti Sreeramulu* v. *Venkata*, 8 M. L. T. 247 ; *Dorai Lal* v. *Sewak Ram*, 29 I. C, 988 ; *Ramzan Ali* v. *Vellasawmi*, 8 I. C. 967 ; *Ram Bullab* v. *Bickraj*, 19 I. C. 88 : *Subbaraya* v. *Vaithianatha*, 33 Mad. 115 ; see also the notes to sec. 8, p. 58 & 59.

(*b*) *Ancona* v. *Marks*, (1862) 7 H. & N. 636.

(*c*) *Ponnaya* v. *Palaniappa*, 7 M.L.T. 271 ; *Pasupathy* v. *Raman*, (1915) M. W. N. 227 ; *Jameson & Co.* v. *Scott*, 36 Cal. 291.

(*d*) *Subba Narayana* v. *Ramaswami*, 30 Mad. 88 ; see *Abdul Hakim* v. *Ebrahim*, 33 C. L. J. 132 (where the payee had to prove identity, before he was entitled to sue) ; *Reotilal* v. *Munna*, 44 All. 290.

(*e*) *Ramanuja* v. *Sadagopa*, 28 Mad. 205 ; *Subbaraya* v. *Vaithianatha*, 33 Mad. 115 (even with the mother or guardian as the next friend.)

(*f*) *Akhoy Kumar* v. *Hari Das*, 18 C. W. N. 494.

(*g*) Cf. *Somasundaram* v. *Krishnamurthi*, 17 M. L. J. 126.

Appx. D.

the other members as parties, even though the money advanced was that of the family. It is on the above principle that it has been held that a person cannot sue on a promissory note made payable to the managing member of his family, unless he gets an indorsement, in his favour, (*a*) and a suit by the Karnavan of a tarwad on a note standing in the name of a deceased female member on the ground that the money advanced is tarwad property has been held not maintainable without an indorsement, unless he brings the suit as a representative of the deceased. (*b*) It is therefore necessary in all cases where a partition takes place in a joint Hindu family and where debts due under bills of exchange or promissory notes are assigned to each of the members for his share, that such members should take care to get the indorsements of the members in whose favour the instruments may have been made. (*c*) This principle is not affected by the fact that the instrument is a non-negotiable one. (*d*) The above view has been sought to be disturbed in Calcutta, (*e*) but later cases in Calcutta have followed the law as stated above. (*f*)

By legal representative.

Though generally, it is the holder or an indorsee from him that has the right to sue, any person who by operation of law or by act of parties gets title to the instrument can also sue on it. The Act deals only with the transfers under Law Merchant, and does not provide for other kinds of transfers. So, a note in favour of a trustee can be sued on by his successor. (*g*) If the holder be dead, his legal representative can sue on bills or notes made in favour of the deceased holder, or of which he was the holder at the time of his death. (*h*) But, before a decree is passed in favour of such a legal representative, he must produce a succession-certificate entitling him to recover the debt due under the instrument sued on, unless the debt is a coparcenary

---

(*a*) *Arunachella* v. *Subba*, 17 M L. J. 393, though doubted in, *Chandana Venkatadri* v. *Lakshminarasimha*, 21 M. L. J. 80, was followed in *Ulagappa* v. *Ramanathan*, 3 L.W. 171, and in second appeal No. 70 of 1915 (Mad.) by Ayling & Napier, JJ.; see also *Raman* v *Nagarathna*, 11 M. L. T. 246; *Akhoy Kumar* v. *Hari Das*, 18 C. W. N. 494; but see *Lodd Govinda Dass* v. *Munusami*, 9 M. L. T. 169, applying *Lodd Govinda Doss* v. *Muneappa*, 31 Mad. 534; see the notes to sec. 27, p. 131.

(*b*) *Chanthiruthi* v. *Veetil Rama*, (1910) M. W. N. 211.

(*c*) See the cases noted in note (*a*) above

(*d*) *Subramania* v. *Arunachala*, 18 M. L. J. 186; *Krishna* v. *Krishnasami*, 23 Mad. 597.

(*e*) *Brojo Lal* v. *Budha Nath*, 55 Cal. 551.

(*f*) *Harkishore* v. *Gurumia*, 58 Cal. 752; but *Surjorj* v. *Deosram*, (1930) Pat. 313; *Seva Ram* v. *Hoti Lal*, 53 All. 5; *Atmaram* v. *Notandas*, (1930) Sind. 4; *Narayanamurti* v. *Vumamaheswaran*, (1930) Mad. 197.

(*g*) *Ramanadhan* v. *Kathavelan*, 41 Mad. 35.

(*h*) *Gopala* v. *Venkatakrishna*, 26 M. L.J. 224; *Chanthiruthi* v. *Veetil Rama*, (1910) M. W. N. 211; *Antonisami* v. *Gnanaprakasam*, 12 L. W. 582 (where one of several heirs was non-suited).

debt, (*a*) though in the case of a promissory note in favour of the deceased managing member of a joint Hindu family, it can be sued on by the surviving member without indorsement or the production of a succession certificate. (*b*) Where there is a bequest of a bill payable to order, the legatee cannot sue on the bill, without the indorsement of the executor in his favour. (*c*) Again, where a negotiable instrument is attached in execution of a decree against the holder and is sold, the purchaser may sue upon such instrument on getting an indorsement by the Judge in the form mentioned in Order 21, Rule 80 of the Civil Procedure Code. (*d*)

By insolvent.

When the payee or the holder of a negotiable instrument is adjudicated, all his properties including bills and notes held by him either as beneficial or reputed owner at the time, pass to his Official Assignee, who is the only person to sue on them. This does not, however, prevent the insolvent from transferring a negotiable instrument made in his favour, and the transferee, it seems, can sue, unless the Official Assignee chooses to intervene. (*e*) Where the Manager of the Court of Wards in possession of an estate takes from tenants for rents, promissory notes payable to himself or order, it has been held that the person really entitled to possession, can, after the cessation of the superintendence of the Court of Wards, sue on these promissory notes even without getting an indorsement in his favour, for, "seeing that they are expressed to be for payment of arrears of rent and run in the name of the manager of the landlord's property, it is not improper to hold that the landlord by his agent is sufficiently indicated as the payee." (*f*) Where a promissory note was executed in favour of A as agent of B and when it was indorsed to plaintiff, signed merely A, it was held that the plaintiff, could not sue, and the description of A as agent of B was intended to denote the character in which the note was executed in his favour; and though the description may not be conclusive, in the absence of any evidence that A was the beneficial owner, he must be regarded only as an agent. (*g*) Where the payee of a promissory note was described as "Agnisami, manager who has obtained a power-of-attorney from the samasthanadhipathi of Udayarpaliem" and it also appeared that the promissory note was executed

(*a*) *Venkataramanna* v. *Venkayya*, 14 Mad. 377; Cf. *Vaidyanatha* v. *Chinnasami*, 17 Mad. 108; *Chockalinga* v. *Natesa*, 17 Mad 147; *Subramania* v. *Rukku Servai*, 20 Mad 232; *Jagmohandas* v. *Allu Maria*, 19 Bom. 338.

(*b*) *Arunachella* v. *Jagannath*, 24 L. W. 659.

(*c*) *Bishop* v. *Curtis*, (1852) 21 L. J. Q. B. 391; *Kuppuswami* v. *Narayanasami*, 44 M. L. J. 510.

(*d*) *Kuthulingam* v. *Pakiyam*, 21 M. L. J. 422.

(*e*) See *Ram Bullab* v. *Bickraj*, 19 I. C. 88; see Byles (19th Edn.) 366.

(*f*) *Lodd Govinda Doss* v. *Muneappa*, 31 Mad 534, per Miller, J.

(*g*) *Veeraiyan* v. *Ponnusami*, 36 Mad. 362.

Appx. D.

in discharge of a prior promissory note executed to "samasthanam samprathi Vythilingam" when the same was about to become barred, it was held that the question as to who the payee was, was one of construction of the promissory note and that it was clear that the Zamindar and not Agnisami was the payee. (*a*) It has further been held that a principal may sue on a promissory note executed in favour of his agent, without any formal assignment by the agent to the principal, where the principal is disclosed. (*b*) If this be good law, it follows that a bill or note taken by a person as guardian of an infant, or as trustee for another, can be sued on by the minor in the one case or the *cestui que trust* in the other. It is clear that in the case of a trustee when he dies or is removed from office, the person succeeding him to the office is entitled to sue on the negotiable instrument taken by the first trustee, for under section 75 of the Trusts Act, the title in the bill or note vests by operation of law in the succeeding trustee. A person may acquire the right to sue by acts of parties, for if the holder indorses the instrument to another, he becomes the holder, and can sue the prior parties. An assignee from the holder of the chose in action in the bill, note or cheque may also sue in his name; but to do so, the assignment must comply with the provisions of sections 130 to 138 of the Transfer of Property Act. (*c*)

In the case of bills or other instruments, the suit may be instituted on behalf of the partnership by any one of the partners. When a partner dies, the survivor is entitled to sue on the instrument taken for the partnership before its dissolution. (*d*)

Not only the holder of the instrument, but also an indorser or the drawer on paying the bill or note is entitled to sue the prior parties for reimbursement.

Who can be sued?

According to the Law Merchant, no person can be sued, unless his name appears on the face of the instrument as a party to it either by name or by designation. So, a partnership cannot be sued on a bill executed by one of the partners even though it is for partnership purposes, unless such partner purported to act on behalf of the partnership (*e*), and the name of the firm appears on the

Principal undisclosed.

(*a*) 5 L. W. (Sh. N.) 43; see also, L.P. A. No. 263 of 1916 (Madras); *Ghulamsa* v. *Visvanatham*, (1917) M.W.N. 344.

(*b*) *Subramania Iyer* v. *Subban*, 21 L. W. 696

(*c*) *Lodd Govindass* v. *Munusami*, 9 M. L. T. 169.

(*d*) *Vaidyanatha* v. *Chinnasami Naick*, 17 Mad. 108; *Chockalinga* v. *Natesa*, 17 Mad. 147.

(*e*) *Somasundaram* v. *Krishnamurti*, 17 M L.J. 126; *Dargavarapu* v. *Rampratapu*, 25 Mad. 580, 583; but see *Karmali Abdulla* v. *Vora Karimji*, 39 Bom. 261; *Shanmuganatha* v. *Srinivasa*, 40 Mad. 727.

Appx. D.

Members of joint Hindu family.

bill (*a*); in like manner, an undisclosed principal cannot be sued on a negotiable instrument executed by his agent. (*b*) But, it has been held that the members of an undivided Hindu family can be sued on a negotiable instrument executed by the managing member of it for family purposes, though the suit is to be framed not only on the promissory note but also on the original debt. (*c*) It has also been held that even an indorsee of a promissory note executed by the managing member of an undivided Hindu family can sue the other members of the family. (*d*) The creditor must prove the existence of family necessity, but he need not see to the application of the money. (*e*) If the manager of a family has ceased to act as such, he cannot bind the other members by acknowledging a time-barred debt; (*f*) where the executant is a younger member, the other members will not be liable, unless it is proved that they had expressly or impliedly authorised him to sign on behalf of the family. (*g*) So far as the Madras High Court is concerned, the main proposition rests on the decision in the case of *Krishna Ayyar* v. *Krishnasami Ayyar*, (*h*) where it was held that the undivided members of a Hindu family not parties to a negotiable instrument, could be sued on the instrument. There is also an earlier *dictum* of Innes, J., in support of the above case; but that is purely *obiter*. (*i*) The Full Bench decision (*j*) expressly leaves the above case unaffected. But, it is submitted that the decision in *Krishna* v. *Krishnasami* (*k*) loses much of its authority, because of the adverse observations of Davies, J., in the same case, and of the trend of the later decisions of the High Courts, (*l*) against countenancing any *benami* transactions on negotiable instruments. Moreover, if the decision is to be accepted

---

(*a*) *Nagoor Meera* v. *Nainar*, 90 I. C. 639; see notes to sec. 27. p. 125-128.

(*b*) *Subba Narayana* v. *Ramaswami*, 30 Mad. 88; *Koneti* v. *J. Gopala*, 38 Mad. 482; *Yinuganti Chinna Venkata Rayanim* v. *Kotagiri Venkata Narasimha*, 14 M. L. T. 502; *Govindan* v. *Nana*, 27 M. L. J. 595 (note executed by a deceased Karnavan, and no decree against the tarwad property given). If the suit is based on the original debt, a decree may be given against the tavazi on the other members of a joint family, on proof that the debt was binding on the tavazi or the joint family. *Nataraja* v. *Ayyasami*, 32 M. L. J. 354; *Thankammal* v. *Kunhamma*, 37 M. L. J. 369; *Venkatachalapati* v. *Ramakrishnayya*, (1930) Mad. 168, (amendment of plaint was also allowed, and decree on original debt was given).

(*c*) *Mehlu Lal* v. *Bholu*, 9 Lah. L. J. 186; *Raghubar* v. *Nanak Chand*, (1927) Oudh 528.

(*d*) *Nataraja* v. *Ayyasami*, 32 M.L.J. 354; *Pethu* v. *Chidambara*, (1931) M.W. N. 390; but see contra *Seetharama* v. *Seshiah*, (1912) M. W. N. 1011; also *Shanmuganatha* v. *Srinivasa* 40 Mad. 727, 731, 732.

(*e*) *Nataraja* v. *Ayyasami*, 32 M.L.J. 354.

(*f*) *Kodandarama* v. *Arunachala*, 32 I. C. 997 (Mad).

(*g*) *Rama* v *Viswanatha*, 45 Mad. 345; *Ramgopal* v. *Dhirendra Nath*, 54 Cal. 380.

(*h*) 23 Mad. 597 (F.B.)

(*i*) *Ramasami* v. *Sellattammal*, 4 Mad. 375.

(*j*) *Subba Narayana* v. *Ramasami*, 30 Mad. 88.

(*k*) 23 Mad. 597 (F. B.).

(*l*) See *Vithal* v. *Vithal*, 25 Bom. L.R. 151.

Appx D.

as correct, the *ratio decidendi* of the case will apply equally to negotiable instruments executed by one partner of the partnership in his own name for partnership purposes. But, it has already been shown that a partnership cannot be made liable on such a negotiable instrument. It is to be further noticed that the decision related to a non-negotiable instrument, and is based at least by one of the Judges on the ground of the cause of action being on the original debt. The analogy referred to by Shephard, J., in the above case is, it is submitted, too far-fetched. It will thus be seen that the Full Bench decision of the Madras High Court requires re-consideration, and the decision is opposed to the views of the Allahabad Judges, (*a*) though authority is not wanting to support the decision. (*b*) The case of the Bombay High Court relied on by Shephard, J., cannot be treated as an authority for his decision, for the point is hardly discussed there. (*c*) In Calcutta, the above decision has been considered, and it was held that the manager of a joint Hindu family cannot bind the other members by his signature alone to the note; (*d*) it was also so held in Bombay. (*e*)

When it is a trading family.

The point is, however, clearer if the joint Hindu family is a trading-firm and if the bill or note is given by the managing member acting on behalf of the firm. In such a case, even the minor members of the family have been held liable for the partnership debt, (*f*) and in a suit by the transferee of a promissory note executed by the managing member of a joint Hindu family for a debt incurred in the family trade, the other members of the family though not signatories, were held liable jointly with the maker of the note to the extent of the coparcenery property. (*g*) But, their liability is never personal, and extends only to the joint family properties in which they are interested. (*h*)

Legal representative.

If the party liable on the instrument is dead, his legal representative may be sued on the bill or note drawn, made or indorsed by the deceased. On the question whether the reversioner can be sued on a

---

(*a*) *Shiam Lal* v. *Ganeshi Lal*, 28 All. 288.

(*b*) *Baisnab Chandra* v. *Ramdhon*, 11 C. W. N. 139; *Krishnanand* v. *Raja Ram*, 44 All. 393; *Raghunath* v. *Sri Narain*, 45 All. 434; *Raghubar Singh* v. *Nanak*, (1927) Oudh 528 (original debt); *Kalyasundaram* v. *Ramasami*, 31 I. C. 317.

(*c*) *Krishnashet* v. *Harivalji*, 20 Bom. 488.

(*d*) *Hari Mohan* v. *Sourendra Nath*, 41 C. L. J. 535; see also *Ramgopal Ghose* v. *Dhirendra*, 54 Cal. 380.

(*e*) *Manchersha* v. *Govind*, 32 Bom. L. R. 1035.

(*f*) *Raghunathji* v. *The Bank of Bombay*, 11 Bom. L. R. 255.

(*g*) *Nataraja* v. *Ayyasami*, 32 M. L. J. 354; *Nachiappa* v. *Dakshinamurthi*, (1915) M. W. N. 217; Cf. also *Govindan* v. *Nana*, 27 M.L.J. 595; *Ram Bujahwan Prasad* v. *Ram Narain*, 2 Pat. L. T. 396.

(*h*) *Official Assignee* v. *Palaniyappa*, 41 Mad. 824; *Chalamayya* v. *Varadayya*, 22 Mad. 166.

promissory note executed by a Hindu widow for purposes binding on the estate, there is some difference of opinion. The Madras and the Allahabad High Courts hold that the reversioner cannot be sued in the absence of a specific charge created by the widow; (*a*) while the Bombay and the Calcutta High Courts hold the contrary view. (*b*) Similar to the case of a Hindu widow is the case of the head of a Mutt executing a promissory note or drawing a bill of exchange for purposes binding upon the Mutt. The successor to the headship of the Mutt can, it seems, be sued on such bill or note. (*c*) This view has been departed from, and it has been held that when a trustee or an executor executes a promissory note for debts borrowed for the trust or the estate, he is himself personally liable and not the trust or the estate; and all that the creditor is entitled to is to be subrogated to the right of the trustee or executor to indemnity. (*d*) But, where a note was executed by the Uralars of a devaswom, it was held that the plaintiff was entitled to a personal decree not only against the Uralars, but also against the devaswom, provided there was necessity to borrow on behalf of the devaswom. (*e*)

Hindu reversioner.

Mutt.

It was held that a minor can also be sued on a promissory note or other instrument executed by his guardian for a debt pre-existing and binding on the estate of the minor, (*f*) or for a family necessity, or for the benefit of the minor; (*g*) but the later and the better view is that the minor's estate, cannot be made liable, but that the guardian alone is liable for the amount. (*h*) In the case of the person liable, becoming an insolvent, the creditor may prove his claim against the estate of the insolvent in the hands of the Official Assignee.

Minor.

Insolvent.

Some of the provisions of the CIVIL PROCEDURE CODE relating to negotiable instruments, are given in the next appendix.

(*a*) *Ramasami* v. *Sellattammal*, 4 Mad. 375; *Dhiraj Singh* v. *Manga Ram*, 19 All. 300; *Reyelle Jogayya* v. *Venkataratnamma*, 20 M. L. J. 412.

(*b*) Cf. *Sakrabhai* v. *Magonlal*, 26 Bom. 206; *Hurry Mohun Rai* v. *Ganesh Chunder Doss*, 10 Cal. 823; *Ramcoomar Mitter* v. *Ichamoyidas*, 6 Cal. 36; *Rameswar Mandal* v. *Provabati Debi*, 20 C. L. J. 23.

(*c*) *Daivasigamony Pandara Sannidhi* v. *Kuppusami*, 17 M. L. J, 40; *Sundaresan* v. *Viswanada*, 45 Mad. 703; Cf. *Murugesam* v. *Manickavasaka*, 40 Mad. 402 (P. C.).

(*d*) *Swaminatha* v. *Srinivasa*, 32 M. L. J. 259; *Ammalu* v. *Namagiri*, 33 M. L. J. 631; In re *Shard*, 28 Cal. 574; *Strickland* v. *Symons*, (1884) 26 Ch. D. 245.

(*e*) *Subramania* v. *Velu*, 49 M. L. J. 717.

(*f*) *Subramania* v. *Arumuga*, 26 Mad. 330; see also *Krishna* v. *Nagamani*, 39 Mad. 915 (where a decree was given against the property of the minor, on a promissory note executed by the guardian.).

(*g*) *Kameswara* v. *Veeracharlu*, 34 Mad. 422; *Duraisami* v. *Muthial*, 31 Mad. 458.

(*h*) *Ramaswami* v. *Muthuswami Ayyar*, 30 I. C. 481; *Subbanna* v. *Subbarayudu*, 50 M. L. J. 125; *Sabapathy* v. *Manikkammal*, 91 I. C. 879; 63 M. L. J. (N.R.C.) 52; but see *Meenakhi* v. *Ranga*, 35 L. W. 397.

APPENDIX E.

THE CODE OF CIVIL PROCEDURE (ACT V OF 1908)

(Provisions applicable to Negotiable Instruments.)

Other suits to be instituted where defendants reside or cause of action arises.

Sec. 20. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction —

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain ; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case, either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution ; or

(c) the cause of action, wholly or in part, arises.

Explanation I. Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place, where he has such temperory residence.

Explanation II. A corporation shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

NOTES.

The indorsement and delivery of a negotiable instrument within the territorial limits of a Court is sufficient to give jurisdiction to that

Court to entertain a suit on the instrument, though it may have been executed outside. (*a*)

Order I. R. 6.

Joinder of parties liable on same contract.

The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

NOTES.

A draws a bill of exchange on B payable to C or order. The bill is accepted by B. C then indorses the bill to D, D indorses it to E, and E to F. If the bill, while in the hands of F, is dishonoured, F may at his option sue A, (the drawer) and B (the acceptor) or C (the indorser); or D or E, or F may bring an action against all or any of them. (*b*)

Order VII, R. 16.

Suits on lost negotiable instruments.

Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

NOTES.

See the notes to section 45-A of the Negotiable Instruments Act, page 210 *et. seq.*

Order XXI, R. 34.

Decree for execution of document, or endorsement of negotiable instrument.

(1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree,

---

(*a*) *Sobromonian* v. *Maung Po Tha*, 11 I.C. 851; *Rogoonath* v. *Gobind*, 22 Cal. 451; *Mangamma* v. *Sathiraju*, 31 M. L. J. 816; *Ponnusami* v. *Damodar*, 47 Mad. 403.

(*b*) *Pestonjee* v. *Mirza*, 3 Cal. 541.

Appx. E.

the decree-holder may prepare a draft of the document of endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served upon the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the documents so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely :—

" C.D., Judge of the Court of
(*or as the case may be*), for A.B., in a suit by E. F., against A. B."

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

Order XXI, R. 51.

Attachment of negotiable instruments.

Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

NOTES.

The method of attaching a promissory note is by actual seizure and bringing it into court; (*a*) but if this is not done, the attachment cannot be said to be a valid one, though a notice of attachment served on the debtor of the promisor stating that he was by injunction ordered not to pay the money towards the promissory note, is effective as an attachment so far as the promisor is concerned. (*b*).

Order XXI, R. 76.

Negotiable instruments and shares in corporations.

Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Order XXI, R. 80.

Transfer of negotiable instruments and shares.

(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officers as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(*a*) *Subramania* v. *Chokkalinga*, 46 Mad. 415; *Namagiri* v. *Muthu Velappa*, 56 M.L.J. 70.

(*b*) *Namagiri* v. *Muthu Velappa*, 56 M.L.J. 70.

Appx. E.

(2) Such execution or endorsement may be in the following form, namely :—

" A. B., by C. D. Judge of the Court of (*or as the case may be*), in a suit by E. F., against A.B. "

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

NOTES.

Whether indorsement by a Judge under this rule is effective to make the transferee a holder has not been decided. (*a*)

Order XXXVII.

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

Application of Order.

1. This order shall apply only to—

(a) the High Courts of Judicature at Fort William, Madras and Bombay;

(b) the Chief Court of Lower Burma;

(c) the Court of the Judicial Commissioner of Sind; and

*(d) any other Court to which sections 532 to 537 of the Code of Civil Procedure, 1882, (XIV of 1882), have been already applied.

NOTES.

Before 1882, the summary procedure on negotiable instruments was provided for by Act V 1866 which has been since repealed and its provisions have been re-enacted in the Civil Procedure Code. It will be noticed that the Lahore High Court is not referred to in

(*a*) *Cf. Watkins* v. *Maule*, (1820) 2 Jac. & W. 237, 243.

* See Notifications under sec. 538 of Act XIV of 1882 in the various list of Local Rules and Orders. (These notifications have been kept in force by sec. 157 of the present code.

the rule; hence it was contended that a rule made by it empowering a Court to try suits under the Order was *ultra vires*, the contention was overruled and the rule was justified under section 122 of the Civil Procedure Code. (*a*) It was also held that even though a suit filed under this Order is not triable under it, the suit cannot be dismissed but directed to be tried in the ordinary way. It will be further noticed that the rule applies to such other Courts under cl. (d) to which it has been applied. The other Courts referred to are the Courts of Small Causes in Calcutta, Madras and Bombay, the Court of the Judge of Karachi and other Courts having original Civil jurisdiction to which the Local Government have by notification applied these provisions. Such Courts in the Madras Presidency are :—

(1) District and Subordinate Judges' (*b*) Courts;

(2) District Munsiffs' Courts;

and in Burma,

(1) the Court of the Judge of Moulmein;

(2) the Courts of the Deputy Commissioner of Akyab.

Institution of summary suits upon bills of exchange, etc.

2. (1) All suits upon bills of exchange, hundis, or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree—

*(a) for the principal sum due on the instrument and for interest calculated in accordance with

(*a*) *Bhondu Mal* v. *Muhammad*, 8. Lah. 156.

(*b*) But not a Subordinate Judge exercising small cause jurisdiction, *Kutb-Ud-Deen* v. *Periyanayaga*, 51 Mad. 491.

*Sub-clauses (a), (b) & (c) of clause (2) and clause (3) were substituted by section 4 of the Negotiable Instruments (Interest) Act XXX of 1926.

Appx. E.

the provisions of section 79 or section 80, as the case may be, of the Negotiable Instruments Act, 1881, up to the date of the institution of the suit, or for the sum mentioned in the summons, whichever is less, and for interest up to the date of the decree at the same rate or at such other rate as the Court thinks fit; and

(b) for such subsequent interest, if any, as the Court may order under section 34 of this Code; and

(c) for such sum for costs as may be prescribed:

Provided that, if the plaintiff claims more than such fixed sum for costs, the costs shall be ascertained in the ordinary way.

(3) A decree passed under this rule may be executed forthwith.

NOTES.

It is optional with the holder to resort to this summary procedure on negotiable instruments, and the limitation for such suit is provided by Art. 5 of the 1st Schedule of the Limitation Act to be one year from the time when the debt or the liquidated demand becomes payable. Under the rules applicable to the original side of the High Court of Madras, there is no such option, and suits on negotiable instruments ought to be under the summary procedure only; and this rule has been held to apply even if the instrument is not negotiable. (*a*) Under Act V of 1866, it was held that the summary procedure did not apply to cases where other evidence beyond the instrument itself had to be taken, before the plaintiff could recover. (*b*) To over-rule these decisions an 'explanation' was added in Act XIV of 1882 which, however, was so ambiguous that it did not effectuate the intention of the Legislature. (*c*) In the present section, the matter is made clearer by the introduction of the words "the allegations in the plaint shall be deemed to be admitted." The summons must be in the form prescribed in Form No. IV, Appendix B, of the Civil Procedure Code. The

(*a*) *Kannayalal Bhoya* v. *Balaram*, 43 M. L. J. 480.

(*b*) *Remfry* v. *Shillingford*, 1 Cal. 130; *Chartered Mercantile Bank* v. *Seconde*, 3 B. L. R. (O. C. J.) 146.

(*c*) *Bhupati Ram* v. *Sourendra Mohun*, 30 Cal. 446.

time given in the form is ten days from the service of summons and this is the period fixed by Art. 159 of the Limitation Act. (See the notes to the Article in the Appendix.)

A suit on a negotiable instrument provided for under Order. 37, falls under the category of suits of the nature referred to in section 128 (2) (f) of the Civil Procedure Code; and Article 5 of the Limitation Act applies to such suits.

A suit claiming in the alternative on the contract contained in a negotiable instrument or for compensation under sections 32 and 117 (c) of the Negotiable Instruments Act can be maintained under this Order. (*a*)

Other conditions being fulfilled, a suit on a Shah Jog hundi will lie under Order 37. (*b*) In a summary suit, the defendant cannot be permitted to counter-claim for the damages caused to him by an alleged failure of the plaintiff to supply goods of the right sort. (*c*) Order 37 contains provisions which were antagonistic to an investigation of claims to a set-off, unless of the clearest description. (*d*)

The powers of the Court under O. 6, R. 17 to allow amendment, apply also to this Order, and it is open to the Court to allow the amount of the plaint so as to base the suit on the original cause of action even after defence has been put in. (*e*) There was some difficulty as to the amount recoverable in a suit under this Order, but the recent amendment has clarified the matter.

Defendant showing defence on merits to have leave to appear.

3. (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

(*a*) *Naraindas & Co.* v. *Chandiran & Co.*, 107 I. C. 218.

(*b*) *Jetha Devji & Co.* v. *Firm of Sriram Moolchand*, 98 I. C. 78.

(*c*) *Weiss Biheller* v. *Firm of Habibbhoy*, 120 I. C. 528; *Sethna* v. *Ladak Khaku*, 8 I. C. 924.

(*d*) *Kooverbhun* v. *Moindas*, 49 I. C. 193.

(*e*) *Bishen Sahai* v. *Abdul Sattar*, (1930) Lah. 559.

Appx. E.

NOTES.

Under section 553 of the old Code, it seems that the Court was bound to grant leave to defend where the defendant pays into Court the sum mentioned in the summons. In the rule as it now stands, discretion is given to Courts to grant or refuse leave, even when the defendant is prepared to deposit the money into Court. When a *prima facie* defence is made out, the Court will grant leave on such terms as it thinks fit, (*a*) and a decision on the question whether leave to defend should be granted or not is a judgment which can be appealed against under section 15 of the Letters Patent. (*b*) Once the Court comes to the conclusion that there is a triable issue, *i.e.*, a plea which is at least plausible, in the case, it must grant leave to defend, without requiring the defendant either to pay the amount claimed into Court or to furnish security therefor. (*c*) Such a condition must be imposed only in exceptional cases, as where the defence is put in only in order to obtain further time. (*d*) But, where the triable issue is not dependent on facts to be investigated, but is simply a question of law, no leave should be given to the defendant, but the point may be decided at once; the question whether by the terms of a promissory note, a personal liability has been undertaken or not is a question of law. (*e*) It has been held that the question whether plaintiffs are or are not holders in due course is a triable issue, (*f*) especially where the defendant pleaded that the note in question was negotiated in fraud of the original understanding. (*g*) It seems that a counterclaim for damages cannot be a ground for defence in a suit under this chapter, especially when the claim is not clear and requires investigation. (*h*) But, the compensation due to the defendant for improper arrest may be taken into account in granting leave, (*i*) as under section 95 (1) of the Civil Procedure Code, investigation into compensation is to be allowed in "any suit." A set-off has also been allowed in some cases. (*j*) When a partner enters appearance in a suit against a firm under Order 30, it is necessary that he should obtain leave to defend under O. 37, R. 2. (*k*) If the defendant defaults in applying

---

(*a*) Cf. *Vonlintzgy* v. *Narayan Singh*, 6 B. L. R. (App.) 64.

(*b*) *Raman Lal* v. *Chunilal*, (1932) Bom. 163

(*c*) *Powszechny Bank* v. *Paros*, (1932) 2 K. B. 353.

(*d*) *Peria Miyana Marakayar* v. *Subramania Aiyar*, 46 M. L. J. 255.

(*e*) *Shyam Sundar* v. *Titaghar Paper Mills*, (1928) Cal. 123.

(*f*) *Lloyds Bank Ltd.* v. *Devidas*, 98 I. C. 72.

(*g*) *Powszechny Bank* v. *Paros*, (1932) 2 K. B 353.

(*h*) *Sethna* v. *Ladak Khaku*, 8 I.C. 924; *Weiss Biheller etc.* v. *Habibbhoy*, 120 I.C. 528; *Koover Bhan* v. *Madandas*, 49 I.C. 193.

(*i*) *Roulet* v. *Fetterle*, 18 Bom. 717.

(*j*) *Indian Specie Bank* v. *Nagindas*, 8 Bom. L. R. 689.

(*k*) *Charry* v. *Pohoomal*, 50 Bom. 665.

for leave, the plaintiff will be entitled to a decree without further proof, on the mere allegations in the plaint. (a)

Power to set aside decree.

4. After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

NOTES.

Where after decree, the defendant alleged a promise by the plaintiff before decree which made it inequitable to allow him to continue the proceeding in the suit, the Court set aside the decree and ordered written statements to be put in. (b)

Power to order bill, etc., to be deposited with officer of Court.

5. In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of cost of noting non-acceptance of dishonoured bill or note.

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

Procedure in suits.

7. Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

(a) *Ross & Co.* v. *Scriven*, 43 Cal. 1001.

(b) *Joseph* v. *Solano*, (1872) 18 W. R. 424.

APPENDIX F.

THE INDIAN EVIDENCE ACT (I OF 1872).

(*Provisions applicable to Negotiable Instruments.*)

Court may presume existence of certain facts.

Sec. 114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

ILLUSTRATIONS.

The Court may presume,

* * * * *

(c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration :

* * * * *

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

* * * * *

as to illustration (c)--A, the drawer of a Bill of Exchange, was a man of business, B, the acceptor, was a young and ignorant person, completely under A's influence.

* * * * *

NOTES.

The 'explanation' to this illustration speaks of "a man of business," which in its popular sense must mean a man habitually engaged in mercantile transactions or trade. (*a*)

Sections 118 and 119 of the Negotiable Instruments Act lay down certain other presumptions.

Estoppel of acceptor of bill of exchange, bailee or licensee.

Sec. 117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw

---

(*a*) *Ningawa* v. *Bharmappa*, 23 Bom. 63, 66.

such bill or to endorse it ; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1)—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2)—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

NOTES.

Estoppels in the case of negotiable instruments are instances of estoppel by agreement or contract. See sections 41 and 42 of the Negotiable Instruments Act. An acceptor cannot show that he was only an agent acting for a principal undisclosed, and escape liability. (*a*)

(*a*) *Phoenix Trading Co.*, v. *Diwanchand*, (1929) Sind 172 ; see notes at p. 127.

APPENDIX G.

THE INDIAN LIMITATION ACT (IX OF 1908)

(Provisions applicable to Negotiable Instruments.)

Definitions.

Sec. 2. In this Act, unless there is anything repugnant in the subject or context,—

* * * * *

Bill of Exchange.

(2) "bill of exchange" includes a hundi and a cheque:

* * * * *

Promissory Note.

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

* * * * *

NOTES.

A document which provides for re-payment in these terms, namely, "I shall pay you whenever you may demand after you attain the age of majority," is a promissory note as defined in the section. (*a*)

Dismissal of suits, etc., instituted, etc., after period of limitation.

Sec. 3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

THE FIRST SCHEDULE.

Description of suit.	Period of limitation.	Time from which period begins to run.
Art. 5.—Under the summary procedure referred to in section 128 (2) (*f*) of the Code of Civil Procedure, 1908 *where the provision of such summary procedure does not exclude the ordinary procedure in such suits and under Order XXXVII of the said Code.	One year.†	When the debt or liquidated demand becomes payable or when the property becomes recoverable.

(*a*) *Kuttiassan* v. *Suppi*, 3 M. L. J. 199; see also notes to sec. 4 of Neg. Ins. Act, p. 26 *et. seq.*

* The words "where the provision ..... Code" were added by Act XXX of 1925.

† The words 'One year' was substituted for the words 'six months' by Act XXX of 1925.

NOTES.

Section 128 (2) (f) of the Civil Procedure Code of 1908 authorises the framing of rules extending the summary procedure to the trial of suits, other than those on negotiable instruments. Under the new code, therefore, suits triable summarily are not confined to suits on negotiable instruments, and hence the necessity for the change in the language of this Article.

It was held by the Calcutta High Court before 1928, that by reason of the reference to section 128 of the Code alone, in the first column, this Article could not be applied to suits under Order XXXVII of Civil Procedure Code. (*a*) Therefore, by a fresh Amending Act XXX of 1925, which came into force on the 1st of April 1926, reference to Order 37 of the Code was made, and the period of limitation for suits under this Article was also extended to one year.

Art. 62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Three years.	When the money is received.

NOTES.

If money under a cheque is paid to a wrong person by mistake, he will still be liable to the true owner, though he may be entitled to recover the amount he paid from the person he has wrongly paid. The true owner of the money also may, under this Article, recover from the person wrongly paid, the money paid to him, as if it were money paid to his use; and it has been held that to such a suit, the starting point of limitation is the actual cashing of the cheque and not the date of the issue of the cheque. (*b*)

Art. 69.—On a bill of exchange or promissory note payable at a fixed time after date.	Three years.	When the bill or note falls due.

(*a*) *Rabindra Nath* v. *Abdul*, 52 Cal. 954; see also *Jetha Devji* v. *Sriram*, 98 I. C. 78.

(*b*) *The Secretary of State for India* v. *Hughes*, 38 Bom. 293.

NOTES.

This Article assumes that the bill has been accepted by the owner, for, if the bill had been dishonoured by non-acceptance, Article 78 is the proper Article to apply.

The period of the commencement of limitation in the Article is based on the case of *Wittersheim* v. *Lady Carlisle.* (*a*) Time runs from the date when the bill becomes payable. Neither the date of its acceptance nor the date of its acquisition by a holder, has any bearing on the question of limitation. For the rules regarding the maturity of the instruments, see the notes to sections 22 to 25 of the Negotiable Instruments Act. Where days of grace are allowed and not waived, time does not run till after expiry of the last day of grace. (*b*) In the case of inchoate instruments, time runs only when the bill becomes one as a filled up bill; (*c*) but if it remains uncompleted for three years, it cannot afterwards be filled up, so as to give a right of action against the acceptor. (*d*) A suit on the original consideration in respect of two unstamped hundis and hence inadmissible, payable a fixed time after date, was held to be barred after three years of the payment of consideration, though the suit was within three years of the date of payment mentioned in the hundi. (*e*) The period of limitation is extended to six years in the Punjab.

The term 'payable one month after date' means payable one month from date. It is not necessary for the applicability of the Article that the bill or note itself should embody the stipulation as to the period of payment. It is enough that there is an agreement, either oral or written, between the parties, that the cause of action for the money was not to commence till after a particular period of the date of the note. (*f*) But, if the note or the bill itself fixed the time for payment, no other evidence would be admissible. (*g*)

Art. 70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Three years.	When the bill is presented.

(*a*) (1791) 1 H. Bl. 681.
(*b*) *Valliappa* v. *Subramanian,* 26 M. L. J. 494.
(*c*) *Montague* v. *Perkins,* (1853) 22 L. J. C. P. 187.
(*d*) In re *Bethell, Bethell* v. *Bethell,* (1887) 34 Ch. D. 561.
(*e*) *Gobinda Kumar* v. *Ram Chandra* 29 C. L. J. 508.
(*f*) *Ponnusami* v. *Vellore Commercial Bank,* 38 M. L. J. 70.
(*g*) *Gobinda Kumar* v. *Ram Chandra* 29 C. L. J. 508.

Though according to section 21 of the Negotiable Instruments Act, the expression 'at sight' in a bill of exchange means on demand, the starting point has been fixed by this Article only from the day when the bill is presented. The commencement of limitation under this Article is based on *Dixon* v. *Nuttall*, (*a*) which holds that no action could be maintainable without the bill being presented for sight. For purpose of limitation, a bill 'at sight' is not regarded as a bill payable on demand. (See Article 73.)

Art. 71.—On a bill of exchange accepted payable at particular place.	Three years.	When the bill is presented at that place.

NOTES.

In the case of *Rowe* v. *Young*, (*b*) it was held that the presentment for payment of a bill of exchange at a named place, was a condition precedent to the right to sue on the bill. That particular rule has been altered by Statute in England; but in India there has been no such alteration. (*c*) The third column of this Article therefore provides that the time runs only from the date when the bill is presented at the place. There is no reference in this Article to promissory notes payable at a specified place only; to such a case, the general Article would apply.

Art. 72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Three years.	When the fixed time expires.

NOTES.

This Article is based on *Thorpe* v. *Coombe*. (*d*) In a suit on a note payable one year after demand, time does not run till after a year after demand is actually made. (*e*)

(*a*) (1834) 1 C. M. & R. 307.
(*b*) (1820) 2 Bligh 391.
(*c*) *Secretary of State* v. *Radhika Prasad*, 46 Mad. 259.
(*d*) (1826) 8 Dow & R. 84.
(*e*) *Thorpe* v. *Booth* (1826) Ry. & M. 388; *Clayton* v. *Gosling* (1826) 5 B. & C. 360; *Moore* v. *Petchell*, (1856) 22 Beav. 172.

Appx. G.

Art. 73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years.	The date of the bill or note.

NOTES.

IN *Norton* v. *Ellam*, (*a*) Baron Parke observes that the creditor is under no obligation in law to make a demand, and if he desires to create such an obligation, he may make it a part of his contract. Under the English law, therefore, 'on demand' is the technical expression whereby money payable 'on demand' is payable at once without any demand. (*b*) The same principle has been adopted by the Indian Legislature in the case of bills and promissory notes. Accordingly, in all bills or notes payable on demand, the liability arises the moment the bill or note is made (*c*); neither the date of its acceptance or the date of its acquisition by the holder has any bearing on the question. The liability of an indorser is not the same as that of the maker. His liability arises out of the indorsement, and not on the note. The cause of action against him cannot arise earlier than the indorsement. (*d*) Article 73 of Act IX of 1871 specially provided for a period of three years from the date of the indorsement, for a suit by the indorsee against the indorser. This special provision is not to be found in the later Acts. It is to be noticed that under section 36 of the Negotiable Instruments Act, the indorser is liable *thereon* to a holder in due course. The liability being based on an independent contract and coming into existence only on a contingency is therefore different in its origin from the liability of the maker. So, if the suit is framed on such independent contract, either Article 65 or Article 115 may apply. But, if the suit is founded *on the note itself*, this Article or Article 80 would apply. The Civil Procedure Code permits a joinder of all parties to a Negotiable Instrument in the same suit. (See Order 1, Rule. 6)

(*a*) (1837) 2 M. & W. 461.

(*b*) *Rowe* v. *Young*, (1820) 4 Bligh 391.

(*c*) *Brajendra* v. *Hindustan Co-opv. Society*, 44 Cal. 978; *Durga Prasad* v. *Kalicharan*, 40 C. L. J. 84; *Framroz* v. *Mohamed Essa*, 50 Bom. 266; *Ganpat* v. *Sopana*, 52 Bom. 88 (F.B.).

(*d*) *Jagannadha* v. *Lakshmana*, 47 M. L. J. 475.

Art. 74.—On a promissory note or bond payable by instalments.	Three years.	The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.

NOTES.

This Article provides for a species of contract where there may be successive breaches. It is to be noted that this Article deals with ordinary promissory notes. There is nothing to prevent the registration of promissory notes, when suits on them will be governed by Article 116.

Under this Article, succesive actions are given, as the successive instalments become due. The action for one instalment may be barred, while the other and later instalments may still remain recoverable. Failure to enforce payment of one particular instalment will not affect the right to recover others not barred. (*a*) If a debt is payable by instalments with no penalty of a default clause, each default gives rise to a new cause of action and the plaintiff can recover all instalments falling due within 3 years before suit, under this Article. (*b*)

But, if there is a default provision under which the whole shall be due at once, on default of one or two instalments, this Article would not apply, unless the benefit of the provision is waived, and the suit is founded on the original instalment arrangement. In other words, if there has been a waiver of the provision in respect of default and the suit is barred not for the whole amount in exercise of the option, but only for such instalments as have fallen due, this Article would apply. (*c*)

Art 75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.	Three years.	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.

(*a*) *Sitharama* v. *Krishnasami*, 38 Mad. 374; *Pancham* v. *Ansar Husain*, 31 C. W. N. 324.

(*b*) *Ibid*; *Gaura* v. *Ramachandran*, 4 Luck. 480.

(*c*) *Mohammad Unis* v. *Janeshar Das*, (1929) All 881; *Arnote* v. *Holden*, (1852) 18 Q. B. 583; but see *Mt. Kaunsilla* v. *Dip Singh*, (1929) All. 812.

Appx. G.

NOTES.

In Equity, a debt being presently payable, a stipulation in a note or bond for the immediate payment of the whole on any default in the payment of an instalment, is not considered in the nature of a penalty, and the Court cannot therefore relieve the debtor against the consequences of such a default or compel the creditor to waive the default. (*a*) It may also be noticed that no stipulation between the parties reserving an option to the obligee as to bringing a suit for money due, can exclude or affect limitation, and the Statute runs from the earliest time at which an action could be brought. (*b*) Generally therefore, waiver does not suspend the right of action, unless there be an express provision made by the Legislature. Such an express provision was introduced by the Limitation Act IX of 1871.

Under the Article, in the case of promissory notes referred to therein, the cause of action arises on the first default; but if the creditor has waived the benefit of the provision in the instalment, the cause of action will not arise on the first default, (*c*) but it arises as each instalment falls due. (*d*) In other words, time runs from the date of the first default, unless there has been a waiver. (*e*) The question whether the creditor is bound to sue or is only entitled to sue on the occurrence of a default in payment of an instalment is absolutely inmaterial, (*f*) though such a distinction is sought to be introduced in some cases. (*g*)

What amounts to a waiver, is a question of fact depending upon the circumstances of each case. (*h*) Mere abstinence from suing for the whole amount due, does not amount to waiver, (*i*) nor mere allowing

---

(*a*) In re *Neil*, Ex-parte *Burden* (1881) 16 Ch. D. 675; *Sterne* v. *Beck*, 32 L. J. Ch. 682; *Tatayya* v. *Gangayya*, 53 M. L. J. 562.

(*b*) See *Hemp* v. *Garland*, (1843) 4 Q. B. 519; *Reeves* v. *Butcher*, (1891) 2 Q. B. 509, 510, 511; *Banker's claim*, (1894) 3 Ch. 290 at 292.

(*c*) *Kankuchand* v. *Rustomji*, 20 Bom. 109; *Ramjawarin* v. *Ram Sing*, 2 Lah. L. J. 314; *Nageshar* v. *Bakridi*, (1932) Oudh 176.

(*d*) *Jadab Chandra* v. *Bhairab Chandra*, 31 Cal. 297; *Ramsekhar* v. *Mathuralal*, 4 Pat 820; *Mt. Kaunsilla* v. *Dip Singh*, (1929) All. 812.

(*e*) *Sheo Narain* v. *Ram Din*, 11 I. C. 526; *Chandan Singh* v. *Bidhya Dhar*, 15 I. C. 856; *Vishwanath* v. *Sadashiva*, (I.R.) 14 Nag. L. J. 141; *Sarat Lakshi Dassya*, v. *Narendra*, (1929) Cal. 292; *Nand Lal* v. *Akki*, 6 Lah. 163; *Probhatchandra* v. *Moheshchandra*, 58 Cal. 615.

(*f*) See *Hemp* v. *Garland*, (1843) 4 Q. B. 519; *Reeves* v. *Butcher*, (1891) 2 Q. B. 509; *The Nicholson Bank* v. *Rajagopala*, 5 L. W. 514; *Basanta Kumar* v. *Nabinchandra*, 53 Cal. 277; *Gopal* v. *Dhondya*, 14 I.C. 685; *Rago* v. *Phillip Tauro*, 56 M.L.J. 580.

(*g*) *Niranjan* v. *Gayadhar*, 30 All. 133; *Ramachandra* v. *Gharbharan Ahir*, (1931) Pat. 272; *Umedmull* v. *Mani Ram Agarwalla*, (1929) Cal. 399; *Mukkyaprana* v. *Kelu*, (1928) Mad. 705.

(*h*) *Karunakaran* v. *Krishna*, 36 Mad. 66; *Nageshar* v. *Bakridi*, (1932) Oudh 176; *Abinash Chandra* v. *Bama Bewa*, 13 C.W.N. 1010; *Osman Shaha* v. *Mahomed Amar Sirkar*, 9 I.C. 22.

(*i*) *Nobodip Chunder* v. *Ramkrishna*, 14 Cal. 397; *Babu Ram* v. *Jodha Singh*, 18 I.C. 690; *Ganpat Balaji* v. *Narayan Sawalinam*, (1924) Bom. 301.

of the default to be unnoticed, be evidence of waiver. (*a*) Waiver contained in a Will which is revokable, cannot amount to a waiver. (*b*) Acceptance of overdue instalments after default may constitute waiver, but it must be of the particular instalment due. (*c*) But, acceptance of a portion of an overdue instalment would, it seems, not amount to waiver. (*d*) It may, however, be pointed out that waiver need not be limited to a subsequent acceptance of an overdue instalment, but may be effected in a variety of ways and may be inferred from various circumstances. (*e*)

The omission to enforce the condition on one default, does not prejudice the condition on a subsequent default. The creditor may waive not only the first default, but also any subsequent defaults. The third column expressly provides for repeated waivers. (*f*) There can be no waiver after the last instalment falls due, for the obvious reason that there are no two obligations to elect between. (*g*) Moreover, when once the option has been exercised, no subsequent enforcement for instalments will be allowed. (*h*)

It may sometimes happen that the terms of the note or bond do not admit of any waiver. In such cases, the only obligation that remains is to sue for the whole amount at once. The creditor has no other alternative than to enforce the only subsisting obligation. By waiving the benefit of such a provision, he foregoes his claim altogether. (*i*) This Article does not apply to a case where the intention of the parties was, that on default, the whole shall become due, only on demand. (*j*)

Art. 76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years.	The date of the delivery to the payee.

(*a*) *Cheni Bash* v. *Kadum Mundul*, 5 Cal. 97.

(*b*) *Venkatacharlu* v. *Venkataramanjulu*, 5 M. L. J. 241, 243.

(*c*) *Nagappa* v. *Ismail*, 12 Mad. 192; *Radha Prasad* v. *Bhagwan*, 5 All. 289; *Wizarat* v. *Mohan Lal*, 43 All. 38; *Balaji* v. *Sakharam*, 17 Bom. 555; *Pandurang* v. *Mahadaji Gokhale*, 27 Bom. 23.

(*d*) *Srinivasa Prosad* v. *Sheo Govind*, 20 I. C. 156.

(*e*) *Mon Mohun* v. *Durga Churn*, 15 Cal. 502; *Girindra* v. *Khir Narayan*, 36 Cal. 394; *Ram Chunder* v. *Rawatmull*, 19 C. W. N. 1172; *Umedmull* v. *Mani Ram Agarwalla*, (1929) Cal 399; *The Nicholson Bank* v. *Rajagopala*, 5 L. W. 514.

(*f*) *Sri Raja Satracherla* v. *Sri Raja Setarama*, 3 Mad. 61.

(*g*) *Mackenzie* v. *Tiruvengadathan*, 9 Mad. 271.

(*h*) *Sri Raja Satracherla* v. *Sri Raja Setrama*, 3 Mad 61; *Radha Prasad* v. *Bhagwan*, 5 All 289.

(*i*) *Mackenzie* v. *Tiruvengadathan*, 9 Mad. 271; *Judhistir* v. *Nobin Chandra*, 13 Cal. 73.

(*j*) *Hanmantram Sadhuram* v. *Arthur Bowles*, 8 Bom. 561; *Karunakaran* v. *Krishna*, 36 Mad. 66; *Seetharama* v. *Munuswami*, 37 M. L. J. 613; *Wasu Ram* v. *Mahammad Bakhsh*, (1930) Lah. 124; *Kaliyappa* v. *Grigori*, 10 L. W. 64; *Umedmull* v. *Mani Ram Agarwalla*, 33 C. W. N. 275.

Appx. G.

NOTES.

This Article is based on the case of *Savage* v. *Aldren.* (*a*) The Article applies whether the note is payable on demand or not, but in the English case noted above, the rule was laid down with reference to promissory notes payable on demand.

Art. 77.—On a dishonoured foreign bill, where protest has been made and notice given.	Three years.	When the notice is given.

NOTES.

The third column of this Article is based upon the case of *Whitehead* v. *Walker.* (*b*) Time, under this Article is made to run from the date of notice when protest had been made for non-payment and notice of dishonour given, though the bill might not be due by then. By non-acceptance followed by protest and notice, an immediate right of action is acquired, a right of action be it noted, not in respect of any special damage from the non-acceptance, but a right of action on the bill, *i.e.*, a right to recover the full amount of the bill. The holder acquires by non-acceptance, the most complete right of action against the drawer, and no subsequent act or omission of the drawee can give him a more extensive right against the drawer than he has already acquired. In other words, the holder does not acquire a new right of action from a subsequent non-payment. (*c*)

Art. 78.—By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance.	Three years.	The date of the refusal to accept.

NOTES.

In England, the starting point for limitation is the date of giving notice of the refusal to accept. The 'payee' under this Article includes also the last indorsee. In the case of dishonour by non-acceptance, the later non-payment which would, in ordinary cases, constitute a cause of action, is disregarded in the computation of the period of limi-

(*a*) (1817) 2 Stark., 232.
(*b*) (1842) 9 M. & W. 506.
(*c*) See *Sheth Kahandas* v. *Dahiabhai,* 3 Bom. 182; *Whitehead* v. *Walker,* (1842) 9 M. & W. 506.

tation. (*a*) If the suit against the drawer is in time, the fact that the acceptor was joined after the period of limitation, does not operate to discharge the drawer. (*b*)

Art. 79.—By the acceptor of an accommodation bill against the drawer.	Three years.	When the acceptor pays the amount of the bill.

NOTES.

In accommodation bills, the drawer is bound to indemnify the accommodation acceptor, and such obligation can arise only when the acceptor is damnified. He is not actually damnified till he pays the amount to any party on the bill. It has been accordingly held that time does not run from the date when the bill becomes due, but only when the acceptor for accommodation makes the actual payment. (*c*)

Art. 80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Three years.	When the bill, note or bond, becomes payable.

NOTES.

A suit on a hundi dishonoured, which had been never presented for acceptance is governed by this Article. Where a promissory note is payable on demand after the obligee attains majority, the cause of action arises from the date of demand after the obligee's attaining majority, for then it is, that the instrument becomes payable. (*d*) Again, where a promissory note was payable after six months whenever the payee should demand the same, the limitation begins to run from the date of demand after six months. (*e*) A suit by the payee against the acceptor, or one against the indorser or other parties by the indorsee is governed by this Article. It is to be noticed that the suits contemplated under this Article are suits on the bills or notes, and not suits on matters arising collaterally to such bills or notes, such as damages, etc. It has been held that this Article may apply to a case of an instalment-bond when the creditor refuses to receive an instalment due. (*f*)

(*a*) *Wilkinson* v. *Verity*, (1871) L. R. 6 C. P. 206; *Miller* v. *Dell*, (1891) 1 Q. B. 468.

(*b*) *Jambu* v. *Sundararaja*, 26 Mad. 239; *Sami* v. *Ramaswami*, 44 M. L. J. 171.

(*c*) *Padma Lochan* v. *Girishchandra*, 46 Cal. 168.

(*d*) *Kuttiassan* v. *Suppi*, 3 M. L. J. 199.

(*e*) *Jeaunissa* v. *Manikji*, 7 Bom. H. C. R. (O. C. J.) 36.

(*f*) *Sitharama* v. *Krishnaswami*, 38 Mad. 374.

Appx. G.

Art. 159.—For leave to appear and defend a suit under the summary procedure referred to in section 128 (2) (f) *or under Order XXXVII of the same Code (*i.e.*, *the Civil Procedure Code*).	Ten days.*	When stheummons is served.

NOTES.

Under the Original Civil Rules of the Madras High Court, all suits on negotiable instruments must be by way of summary procedure only. (*a*) But, under the Code, suits may be laid either under the summary procedure or in the ordinary form. The advantage of a summary procedure over the ordinary form is that the defendant is not as a matter of right entitled to defend the suit. He has to obtain previous leave before offering to defend. This Article therefore provides that such leave should be obtained within 10 days of the date of service of the summons. It has been held that the date shown in the sheriff's return as to the date of service, is the only date to be taken into account in deciding the question of limitation. (*b*) It may be open to the Court to extend the time for service, but it cannot grant an extension of time to appear and defend after such service, unless section 5 of the Limitation Act is made applicable by a rule properly framed in that behalf. But, on service of summons, if it appears to the Court that it is not possible for the defendant to appear in 10 days, the Court may well stay execution so as to enable him to apply under Order 37, Rule 4 of the Code. (*c*) An application under this Article may be made on the re-opening day, if the period of 10 days expires on a holiday. (*d*) As to what can be done after decree by one who had not obtained leave to defend, see *Pestonji Shapurji* v. *Jamsedji Nowroji*. (*e*) Irregular service of summons on one of the co-defendants to an action on a promissory note will not give to the defendant properly served, any ground to question the decree passed against him. (*f*)

---

* The words "or under Order XXXVII" in the 1st column, were inserted by sec. 8 of Act XXX of 1925. The words "Ten days" in the 2nd column were substituted by sec. 2 and schedule I of Act XI of 1923.

(*a*) *Venkataramayya* v. *Nurse*, 49 Mad. 815.

(*b*) *Madhub Durgur* v. *Woopendra-Narain*, 23 Cal. 573.

(*c*) *Chandra Khant* v. *N. P. Pogose*, 3 B. L. R. 83; *Grob* v. *Palmer*, 1 Ind. Jur. N. S. 395.

(*d*) *Tata Industrial Bank* v. *Abdul Husein*, 25 Bom. L. R. 1296 at 1298.

(*e*) *Pestonji Shapurji* v. *Jamsedji Nowroji*, 50 Bom. 262.

(*f*) *Ewing Co.* v. *Gosaidas Ghose*, 3 B. L. R. (App) 7.

APPENDIX H.

THE INDIAN PAPER CURRENCY ACT (X OF 1923).

(Provisions applicable to Negotiable Instruments).

Private Bills payable to bearer on demand.

Prohibition of issue of private bills or notes payable to bearer on demand.

25. No person in British India shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand, of any such person:

Provided that cheques or drafts, payable to bearer on demand or otherwise, may be drawn on bankers, shroffs or agents by their customers or constituents, in respect of deposits of money in the hands of those bankers, shroffs or agents and held by them at the credit and disposal of the persons drawing such cheques or drafts.

Penalty for issuing such bills or notes and institution of prosecutions.

26. (1) Any person contravening the provisions of section 25 shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be punishable with a fine equal to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed.

(2) Every prosecution under this section shall be instituted by the officer in charge of the circle of issue in which the bill, hundi, note or engagement is drawn, accepted, made or issued.

NOTES.

The provisions in the Indian Paper Currency Act follow the wording of the English Bank Charter Act 1839, which was subsequently explained by 17 and 18 Vict. Ch. 83, section 2.

The present section prohibits instruments payable on demand, and no suit can be maintained on them unless drawn on bankers, shroffs

Appx. H.

or agents ; (*a*) but it has no application to a hundi payable to bearer one day after sight. (*b*) Where the note contained the words " on demand to him, (that is, to the lender) or to whomsoever he orders it to be paid," it was held that the note contravenes the terms of section 25. (*c*) The test in such cases is to see whether the instrument in suit is payable to any person who may be in possession thereof. Though a note may be void as offending against the above sections, a suit on the original cause of action may lie, (*d*) and may also be relied on for a collateral purpose. (*e*)

(*a*) *Brij Bhushan* v. *Ramjanam Kuer*, 13 Pat. L. T. 506.

(*b*) *Swee Long & Co.* v. *A.T. Chettiyar Firm*, (1927) Rang. 159.

(*c*) *Ajudhia Prasad* v. *Rikhnath*, 50 All. 764.

(*d*) *Chidambaram* v. *Ayyasami*, 40 Mad. 585 ; *Nachimuthu* v. *Audiappa*, 6 L. W. 630 (plaint amended) ; *Mian Bakshi* v. *Bodhiya*, 50 All. 839 (F.B.)

(*e*) *Natarajulu* v. *Subrahmanian*, 45 Mad. 778 ; see the notes under sec. 35 of the Stamp Act (Appendix J.).

APPENDIX J.

THE INDIAN STAMP ACT (II OF 1899).

(*Provisions applicable to Negotiable Instruments*).

Sec. 2. In this Act, unless there is something repugnant in the subject or context,— Definitions.

(1) "banker" includes a bank and any person acting as a banker: Banker.

NOTES.

The word 'person' includes a partnership or a corporation. (*a*) Therefore, a banker is any individual, partnership or company carrying on the business of banking. It has been held that Nattukottai Chetties, though they are primarily money-lenders, are also bankers. (*b*)

(2) "bill of exchange" means a bill of exchange as defined by the Negotiable Instruments Act, 1881, and includes also a hundi, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money: Bill of Exchange.

(3) "bill of exchange payable on demand" includes— Bill of Exchange payable on demand.

(a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;

(b) an order for the payment of any sum of money weekly, monthly or at any other stated periods; and

---

(*a*) Gen. Clauses Act X of 1897, sec. 3 (39).

(*b*) *Kadiresan* v. *Ramanathan*, (1927) M. W. N. 118 at 120.

Appx. J.

Letter of credit.

(c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn:

* * * * * *

NOTES.

The definition of "bill of exchange" in this Act is much wider than that given in the Negotiable Instruments Act, section 5. It includes many instruments that cannot be strictly called bills of exchange, and therefore they also require to be stamped. For the purposes of the Stamp Act, it is enough if it be a document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of any sum of money. Interest-coupons were held to be bills of exchange under this Act. (*a*) Demand drafts by one branch of a bank on another branch of the same bank are bills of exchange, but are exempt from stamp duty by virtue of Act V of 1927. (*b*) An order to the bank to transfer a sum of money from one account to another given by a customer, has been held to be a bill of exchange payable on demand requiring stamp. (*c*) Where a bank issued to its customers, booklets containing receipt-forms similar in appearance to cheques and authorised them to sign the same and agreed to pay the person presenting them with their names therein, it was held in what is known as the 'chequelet' case, that the documents were bills of exchange under the English Act of 1891 and liable to duty. In deciding the question, one has not only to look at the mere words in the document in the abstract, but also the function of the document as intended and understood by the parties who employed them; that is, regard must be had, not only to what the document is, but also how it is used. (*d*)

Again, a bill need not, for the purpose of the Stamp Act, be payable at all events, and may be subject to any condition or contingency. It may even be made payable out of a particular fund whether available or not. Thus, an order to pay a certain sum of money out of the sale proceeds of the goods of the drawer in the hands of the drawee, though it may be insufficient, must be stamped as a

---

(*a*) *Rothschild & Sons* v. *Commissioners of Inland Revenue*, (1894) 2 Q. B. 142.

(*b*) Re *Imperial Bank*, 56 Cal. 233.

(*c*) *Committee of London Clearing Bankers* v. *Commissioners of Inland Revenue*, (1896) 1 Q. B. 542.

(*d*) *Midland Bank* v. *Inland Revenue Commissioners*, (1927) 2 K. B. 465; *Rothschild & Sons* v. *Commissioners of Inland Revenue*, (1894) 2 Q. B. 142, 146.

bill of exchange payable on demand. (*a*) However, the order for payment of money pre-supposes money in the hands of the drawee, so that, if the order be from the debtor to the creditor to receive money for the price of fodder sold, such an order cannot come within this definition in the Act. (*b*) So also, an order by a master to his servant for the payment of money belonging to the former in the hands of the latter is not an order for payment of money within the purview of this section, as an order contemplated by the definition seems to be of the nature of a mercantile instrument similar to a draft or cheque. (*c*)

The definition includes inchoate negotiable instruments also, such as those contemplated by section 20 of the Negotiable Instruments Act; for, as is apparent from the section, the payee's name need not be mentioned in the instrument; nor need the name of the drawer appear, if only the instrument authorises the payee to draw upon any other person. Further, the definition includes a hundi, *i,e.*, a negotiable instrument in the vernacular, so that all the provisions relating to bills of exchange are also applicable to them, subject to the special rules relating to hundis under section 10, sub-sec- 2 (c).

'Letter of credit' is an open letter of request, whereby one person requests another to advance money or give credit to a third person named therein, and promises to pay the same or accepts bills drawn on himself. (*d*) But, an instrument merely intimating that a confirmed irrevocable credit has been opened with the condition that the drawer is not released from liability is not such a letter. (*e*)

In determining the question whether a particular instrument is sufficiently stamped, the Court should only look at the instrument as it stands. (*f*) A memorandum in an instrument payable on demand fixing the date of demand, cannot affect the question of stamp. (*g*) For the duty payable on bills, see Sch. 1, Art. 13.

Sec. 2. (5). "Bond" includes—

Bond.

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation

---

(*a*) *Firbank* v. *Bell*, (1817) 1 B. &.Ald. 36; see *Fisher* v. *Calvert*, (1879) 27 W. R. 301.

(*b*) *Nandu Bai* v *Gau*, 27 Bom. 150.

(*c*) *Sree Putbalwant* v. *Futteh Oodeen*, 1 N.W.P. 143; *Rungildas* v *Vrijbhukhan*, 17 Bom. 584; *Raeburn & Co.* In Re, 47 I.C. 561.

(*d*) *Chandarmall* v. *National Bank of India*, 51 Cal. 43, 47.

(*e*) *Sassoon and Sons Ltd*, v. *The International Banking Corporation*, 55 Cal. 1. (P.C.).

(*f*) *Sakharam* v. *Ramachandra*, 27 Bom. 279; see also *Biswanath* v. *Gobinda*, 29 C. L. J. 305.

(*g*) *Chandra Kant Mookerjee* v. *Kartik Charan Chaile*, 5 B. L. R. 103.

Appx. J.

shall be void if a specific act is performed, or is not performed, as the case may be;

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(*c*) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another;

* * * * * * *

Cheque.

Sec. 2. (7). "cheque" means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand:

NOTES.

This section has been newly inserted in the place of the old section so as to bring it in conformity with the definition given in the Negotiable Instruments Act. A cheque must be payable on demand and must be drawn on a banker. Mere chits addressed to the person not a banker, requesting him to pay a third person certain amounts mentioned therein, are not cheques and are admissible in evidence without stamp. (*a*) Where an instrument purports to be a receipt and specifies the name of the messenger who is to receive the amount, the instrument is not liable to stamp duty, and it will be merely a receipt. (*b*) A post-dated cheque is not invalid and may be admitted in evidence as a bill payable otherwise than on demand, for the test of admissibility is determined by the document as it stands, and not in the light of collateral circumstances. (*c*) By Act V of 1927, stamp duty payable on cheques is abolished, see, Sch. I.

Duly stamped.

Sec. 2. (11). "duly stamped," as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in British India:

NOTES.

An instrument is duly stamped when it is stamped in the manner pointed out by the Act and according to the rules

(*a*) *Ratulal Rungildas* v. *Vrijbhukhan*, 17 Bom. 684.

(*b*) In re, *Stamp Act*, 13 I.C. 330.

(*c*) *Raman Chetty* v. *Mahomed Ghouse*, 16 Cal. 432; *Ramprasad* v. *Shrinivas*, 27 Bom. L. R. 1122.

framed by the Government of India under the Act. Thus, the stamping must be at the time of execution (*a*), and not after, and the cancellation of the stamp in the case of a hundi must be made at the time of execution and delivery. (*b*) Where more than one stamp is used, the aggregate value of the stamps represents the correct value payable. (*c*) Where a bill of exchange for Rs. 500 payable otherwise than on demand bore an adhesive stamp for the amount, it was held that it was not duly stamped because it was not, as it ought to have been, written on an impressed sheet. (*d*) But, a promissory note for less than Rs. 200 payable otherwise than on demand but not more than one year after date, was held to be duly stamped when written on an impressed sheet of two annas, though it bore the word "hundi." (*e*)

Promissory note.

Sec. 2 (22). "promissory note" means a promissory note as defined by the Negotiable Instruments Act, 1881;

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen:

NOTES.

As to what are the essential requisites of a promissory note, see notes to section 4 of the Negotiable Instruments Act. A chit, acknowledging liability and containing a promise to pay, has been held to be a promissory note, (*f*) but a document, the executant of which undertakes to make certain specified payments towards the sum due under it and agrees that on his failure to do so, he would return a boat which he had bought, is not a promissory note payable otherwise than on demand, but only an agreement (*g*); and an unattested document wherein the debtor covenants to pay a certain sum with a further covenant that the creditor will not sue on the original promissory note merged in the document, is only an agreement and not a bond or a promissory note. (*h*) So also, where the drawer of a document promised to pay a sum of money withdrawn by him from Court with interest as soon as the promisee settled the High Court affair, and

(*a*) *Jethibai* v. *Ramchandra*, 13 Bom. 484.

(*b*) *Bhawanji* v. *Devji*, 19 Bom. 635.

(*c*) *Sarada Nath* v. *Gobinda*, 23 C. W. N. 534.

(*d*) *Radha Kant* v. *Abhoy Churn*, 8 Cal 721; *Venkataram* v. *Shankar Narayan*, 19 Bom. L. R. 862.

(*e*) *Radhabai* v. *Nathuram*, 13 All. 66.

(*f*) *Chokkalingam Chetti* v. *Annamalai Chetti*, 34 I.C. 417.

(*g*) *Katchi Rowther* v. *Naina Mohamed*, 28 I.C. 300.

(*h*) *Yeo Eng Pwa* v. *Chetty Firm*, 4 I.C. 293 (F.B.).

Appx. J.

that if it should be ordered to be paid into Court by the High Court, he would pay it into Court, it was held that it was not a promissory note. (*a*)

For stamp purposes, however, a promissory note is defined so as to include a note promising to pay a sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen. The only point to notice here is that an instrument attested by witnesses and not expressed to be payable to bearer or order, comes also under the definition of a bond in section 2, cl. 5, (b). Thus, if an instrument is payable to order or bearer, it is a promissory note, although attested; if it is an instrument not payable to order or bearer and is attested, it is a bond. (*b*) When an instrument falls under more than one kind of instruments as defined by the Act, and if one kind is chargeable with a higher duty, the Crown is entitled to demand the higher duty on the instrument.(*c*) For duty payable on a promissory note, see Sch. I, Art. 49. A promissory note stamped with four quarter anna postage stamps can be validated by the Collector under R. 18 of the Government of India Rules, as such stamps are stamps of 'improper description" within the meaning of the rule. (*d*)

Receipt.

Sec. 2 (23). "receipt" includes any note, memorandum or writing—

(a) whereby any money, or any bill of exchange cheque or promissory note is acknowledged to have been received, or

(b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or

(c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(d) which signifies or imports any such acknowledgment,

and whether the same is or is not signed with the name of any person:

(*a*) 36 L W. (sh. n.) 57.

(*b*) *Venku* v. *Sitaram*, 29 Bom. 82; *Reference under Stamp Act*, 8 Mad. 87.

(*c*) *Speyer Bros.* v. *Commissioners of Inland Revenue*, (1908) A.C. 92 (H.L.).

(*d*) *Martis* v. *Cuthubert D'Souza*, 62 M. L. J. 538 (F.B.); following *Ma Pwa May* v. *S. R. M. M. A. Chettiar*, 7 Rang. 624 (P.C.), and dissenting from *Venkataraman* v. *Shankaranarayan*, 19 Bom. L.R. 862.

NOTES.

An acknowledgment of receipt of a cheque contained in a letter is liable to stamp duty, if the amount of cheque is over twenty rupees, (see Sch. I, Art. 52), and if it is unstamped, the writer of the letter will be liable to conviction. (*a*) A receipt given by the assistant of a Firm for money handed to him to be paid to the cashier of the Firm, does not require to be stamped. (*b*) A mere acknowledgment of the correctness of an account, is not a receipt. (*c*)

Instruments chargeable with duty.

Sec. 3. Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefor, respectively, that is to say—

(a) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in British India on or after the first day of July, 1899;

(b) every bill of exchange, payable otherwise than on demand * or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or indorsed, transferred, or otherwise nogotiated, in British India; and

(c) every instrument (other than a bill of exchange, † or promissory note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India and is received in British India:

Provided that no duty shall be chargeable in respect of—

(I) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this

(*a*) *Queen Empress* v. *Muttirulandi*, 11 Mad. 329.

(*b*) *Burn & Co.*, in the matter of, 37 Cal. 634.

(*c*) *Wellard* v. *Moss*, (1823) 1 Bing. 134; see *Debi Prasad* v. *Rupu* 6 All. 253.

* In this clause, the word 'cheque' has been omitted by Act V of 1927, and the words "payable otherwise than on demand" have been added.

† In this clause, the word 'cheque' has been omitted by Act V of 1927.

Appx. J.

exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

* * * *

NOTES.

Demand drafts issued by one office of a bank upon another office of the same bank are bills of exchange, and are exempt from stamp duty under the above section as amended by the Finance Act of 1927. (*a*) The learned judges in the above case came to this conclusion, mainly relying on the provisions of section 17 of the Negotiable Instruments Act which allows the holder to treat such instruments as bills of exchange. (*b*)

When a bill, issued out of British India, is not stamped in accordance with the law of the place of issue, and that law declares that such a contravention shall render the instrument void, it is void everywhere; but when that law is concerned merely with the revenues of the foreign country and only provides penalties, the Courts of British India will not take notice of the fact that the instrument is not stamped in accordance with the law of the place of issue. (*c*) Foreign negotiable instruments are not altogether free in India from duty. They have to be affixed with the proper stamp, and the stamp must be cancelled before such an instrument can be accepted or paid or presented for acceptance or payment, or can be indorsed, transferred or otherwise negotiated in British India. But, when none of these things takes place, no stamp is necessary. (*d*) It seems that no stamp is necessary even before a decree is passed upon the instrument. (*e*) A bill of exchange is not cancelled merely because the holder extends the time for payment in favour of the acceptor; and the alteration in the date of payment made by consent of parties does not render the bill a new instrument so as to require the same to be stamped. (*f*) Where in performance of an agreement to smuggle whisky into U. S. A. against the laws of their country, two documents purporting to be bills of ex-

---

(*a*) *Demand-drafts of the Imperial Bank of India*, In re, 56 Cal. 233; see *Alagappa* v. *Narayanan*, 63 M. L. J. 548.

(*b*) See *Capital and Counties Bank* v. *Gordon* (1903) A.C. 240, 250; *Bibi Kazmi* v. *Lachhman Lal*, 7 Pat. 717.

(*c*) *Smith* v. *Prosser*, (1907) 2 K. B. 735; *Amina Begam* v. *Nawab of Rampur*, 33 All. 571; *Dhondi Ram* v. *Sadasuk*, 42 Bom. 522; *Venkatarama* v. *Rajah of Gadwal*, 53 Mad. 968; see the notes to sec. 131 of the Negotiable Instruments Acts.

(*d*) See sec. 19 of the Stamp Act; *Mahomed Rowthan* v. *Mahomed Husin Rowthan*, 22 Mad. 337; *Simulu Ebrahim Rowthan* v. *Abdul Rahiman*, 8 M. L. J. 182, following *Griffin* v. *Weatherby* (1868) L. R. 3 Q. B. 753.

(*e*) *Kunhi* v. *Panikka*, 36 M. L. J. 188; but see, *Simulu Ebrahim* v. *Abdul*, 8 M. L. J. 182.

(*f*) *Cox & Co.* v. *Pestonji & Co.*, 50 Bom. 656, affid. on appeal, 52 Bom. 589 (P. C).

change, both headed "London" and written upon unstamped paper, one of which was drawn, accepted and indorsed in England and the other was not signed by any one as drawer, but was accepted in England, and both the bills were sent to one of the conspirators who was then outside the country at Lausanne, who struck out the word 'London,' added 'December 3rd' as the date of each and signed his name as the drawer of the second, and stamped them both as foreign bills, it was held that the first bill being drawn, accepted and indorsed in the country on unstamped paper was void, and the other though valid in all respects as a foreign bill was invalidated by having a date added not in accordance with the contract. (*a*)

Duties how to be paid.

Sec. 10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(a) according to the provisions herein contained ; or,

(b) when no such provision is applicable thereto, as the Governor-General in Council may by rule direct.

(2) The rules * made under sub-section (1) may, among other matters, regulate,—

(a) in the case of each kind of instrument—the description of stamps which may be used;

(b) in the case of instruments stamped with impressed stamps—the number of stamps which may be used;

(c) in the case of bills of exchange or promissory notes written in any Oriental language—the size of the paper on which they are written.

NOTES.

Under this section, the Governor-General in Council is empowered to frame rules regulating the description of stamps to be used and the size of the paper on which hundis, *i.e.*, native bills of exchange or promissory notes ought to be written. However, such rules cannot

---

(*a*) *Foster* v. *Driscoll*, (1929) 1 K. B. 470, 481.

* For rules as to the use of impressed and adhesive stamps, see Notification No. 3632. Exc. dated, 29th June 1906, Gazette of India, 1906, Pt. I. p. 439.

Appx. J.

affect the provisions of section 11. For those rules, see Donogh's Stamp Act, (eighth edition), pages 733 *et. seq.*

These rules have the force of law under section 76 (2). Any instrument not complying with these rules is not duly stamped; but, if the rules are inconsistent either with the Act or its general purpose, they are *ultra vires* and the Courts are not bound to give effect to such rules. (*a*)

Use of adhesive stamps.

Sec. 11. The following instruments may be stamped with adhesive stamps, namely :—

(a) instruments chargeable with the duty of one anna* or † half an anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) bills of exchange,‡ and promissory notes drawn or made out of British India;

* * * * *

(d) notarial acts;

* * * * *

NOTES.

Negotiable instruments chargeable with duty of one anna, are:—

(1) bills of exchange payable on demand [Art. 13], and

(2) promissory notes payable on demand, when the amount or value does not exceed Rs. 250 (Art. 49).

Under Rule 12 of the rules of the Government of India, bills of exchange payable otherwise than on demand and drawn in sets, when the amount of the duty for each part of the set does not exceed one anna, may be stamped with adhesive stamps. A hundi payable otherwise than on demand cannot be stamped with an adhesive stamp, because the stamp required is more than one anna. (*b*) In determining whether a document is sufficiently stamped, the Court will look at the document as it stands, and decide the question; so, a hundi payable

(*a*) Cf. *Reference under Stamp Act*, 7 Mad. 176.

* The words 'one anna' were inserted by Act V of 1906; Legislative changes [for Bombay only]: in clause (a) of this section, before the words "one anna", the words "two annas" were inserted.

† The words 'or half an anna' were inserted by sec. 3 of the Indian Stamp (Amendment) Act V of 1906.

‡ In this clause, the word "cheque" has been omitted by Act V of 1927.

(*b*) *Devaji* v. *Ramkristniah*, 2 Mad. 173; Cf. *Radhakhant* v. *Abhoy Churn*, 8 Cal. 721.

on demand bearing one anna stamp, is sufficiently stamped, though it is proved that it is ante-dated or post-dated. (*a*)

The word "may" in the section shows that the use of the adhesive stamp is only permissive and not obligatory. Writing such an instrument on an impressed sheet of the proper value, does not make it invalid.

Cancellation of adhesive stamps.

Sec. 12. (1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

NOTES.

If a person affixing the stamp does not cancel it, he is liable under section 63 of the Act to a fine which may extend to Rs. 100. The first paragraph of this section applies to instruments which may be stamped after execution; the second paragraph, applies to cases where the stamp is affixed at the time of execution. "Execution" is said to mean "signature." (*b*) Previous to this Act of 1899, the term 'execution' was not defined, and it was held under that Act, that a hundi or other negotiable instrument though written and signed by the party, was not executed before its delivery to the person entitled, and that the cancellation of the stamp at or before

(*a*) *Ramprasad* v. *Shrinivas*, 27 Bom. L. R. 1122; *Ramen* v. *Mahomed*, 16 Cal 432.

(*b*) Ind. Stamp Act, sec. 2 (12).

Appx. J.

the time of such delivery, was enough to satisfy the requirements of the section. (*a*) But, now that decision cannot apply, and every instrument has to be stamped and cancelled at the time the executant puts his signature to it. (*b*) But, it would not make any difference if the stamp is affixed and cancelled immediately after the signature, the signing and the stamping being continuous acts of the same transaction. (*c*)

The clause (2) of the section provides that if an instrument, such as a promissory note or a bill of exchange, bears an adhesive stamp, but such stamp is not cancelled so that it cannot be used again, such instrument shall be treated as unstamped, (*d*) and so cannot be admitted in evidence by a Court of law or any other person having authority to receive evidence (*e*); and this penalty rendering inadmissible in evidence a document not properly stamped, has been held to apply even to a case in which the omission to cancel was merely due to carelessness. (*f*)

The clause (3) of the section was newly added, and indicates how the cancellation is to be made. The cancellation must be in all cases in such a manner that the stamp cannot be used again. The question whether a stamp has been effectively cancelled is one of fact, (*g*) and it is not possible nor is it advisable to lay down any general rules, when the Legislature itself has abstained from doing so. (*h*) The drawing of some blue lines across the stamp was held insufficient, (*i*) but dissenting from the Bombay case above-noted, it was decided that a cross-mark on the stamp by an illiterate person in token of his acknowledgment, is an effectual cancellation. (*j*) The question is really one of intention, (*k*) and if it is clear and if any person would on seeing the stamp come to the conclusion that it had been used, (*l*) no question can arise. Thus, where an adhesive stamp on a promissory note was cancelled by lines across it in different directions, each line extending beyond the edges of the stamp to the paper, it was held that the can-

---

(*a*) *Bhawanji* v. *Devji Punja*, 19 Bom. 685.

(*b*) *Dayaram* v. *Chandulal*, 27 Bom. L. R. 1118.

(*c*) *Surij Mull* v. *Hudson* 24 Mad. 259.

(*d*) See *Vernon Allen* v. *Meera Pullay*, (1882) L. R. 7, A. C. 172.

(*e*) See Ind. Stamp Act, sec. 35; *Sundar Das* v. *People's Bank of India*, 16 I. C. 834.

(*f*) *People's Bank of India* v. *Abdul Karim*, 14 I. C. 512.

(*g*) *Mela Ram* v. *Brij Lal*, 54 I. C. 976 (Lah,).

(*h*) *Solamalai* v. *Vadamalai*, 23 M. L. J. 273.

(*i*) *Ibid*, 23 M. L. J. 273.

(*j*) *Kolaisai* v. *Balai Hajam*, 3 Rang. 39; *Mac Mullen* v. *Sir Alfred*, 18 T. L. R. 650.

(*k*) *Mohammad Amir* v. *Kedarnath*, 15 I. C. 202.

(*l*) *Kishore Lal* v. *Ram Lal*, 3 Lah. L. J. 170.

cellation was effectual. (*a*) Generally, the stamp may be cancelled by writing the name or putting the initials on the stamp or by writing across it the true date of the instrument. (*b*) The signature of an illiterate person on the stamp, made by a scribe under his direction, is as good as his own signature, for purpose of cancellation. (*c*) If on a note, one of the two anna stamps on it was cancelled and the other not, it is not sufficient cancellation, and the document must be held to be unstamped to that extent. (*d*)

Instruments stamped with impressed stamps, how to be written.

Sec. 13. Every instrument written upon paper, stamped with an impressed stamp, shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

NOTES.

This section applies not only to instruments required by law to be written on an impressed stamp paper, but also to those which may be written on such paper. Some portion, at any rate, of the instrument must appear on the face of the instrument, the object being that the paper must be effectually cancelled, so that it cannot be used again. If this condition is satisfied, the writing may be commenced even on the reverse side of the paper, (*e*) or the writing commenced on the face, may be continued on to the reverse side of the paper; the rule of the Government of India allowing the use of plain papers in addition to the impressed sheet being only an enabling rule. (*f*) Where two impressed sheets were used to make up the amount of duty chargeable in respect of a promissory note, but the whole of the instrument was written on only one of the sheets and the other was blank, it was held that the instrument was not duly stamped. (*g*) Again, in a suit on two hundis, it was found that they were not single stamp papers, but that three stamps were used for one hundi and two for the other and there was no deficiency in the value of stamp, and where it was further found that these impressed sheets were pasted one upon the other, leaving writing space only on the stamp on which alone the hundis were written, it was held that the stamps were not properly cancelled, as nothing has been actually written on them. (*h*)

(*a*) *Thakuri Mallah* v *Ram Tahal*, 52 All. 489.

(*b*) Compare *Bhawanji* v. *Devji Punja*, 19 Bom. 635; *Ralli* v. *Caramalli*, 14 Bom. 102.

(*c*) *Virbhadrapa* v. *Bhimaji*, 28 Bom. 432; *Dayaram* v. *Chandralal*, 27 Bom. L. R. 1118.

(*d*) *Tun Hlaing* v. *Ma Kha Bu*, (1929) Rang. 270.

(*e*) *Dowlat Ram* v. *Vitho Radhoti*, 5 Bom. 188.

(*f*) *Reference under Stamp Act*, 7 Mad. 176.

(*g*) *Mohanlal* v. *Kesari Mull*, 15 M. L. T. 203.

(*h*) *Kundanlal* v. *Bhikari*, 51 All. 530.

Appx. J.

Only one instrument to be on same stamp.

Sec. 14.—No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written:

Provided that nothing in this section shall prevent any indorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods, the payment or delivery of which is secured thereby.

NOTES.

The reason of the rule is that by the execution of the first instrument, the stamp is exhausted and it requires a fresh stamp for the second instrument, to give it validity. Thus, if a bill of exchange is written on a stamped paper, and is materially altered either with or without the consent of the parties, the altered bill of exchange becomes a new instrument and is valid, if it is not stamped afresh. (*a*) Where A lent a sum of Rs. 50 to B and obtained a promissory note from him for the same, and a further advance of Rs. 150 was taken by B two or three days later, and the promissory note of Rs. 50 was altered by scoring out Rs. 50 and inserting "Rs. 200" and the rate of interest also was changed, it was held that by the alterations, the promissory note had been made to represent two distinct transactions, for the record of which no duty was at all paid, and the stamp on the promissory note must be considered to have been used in contravention of this section. (*b*) But, if the alteration is only to correct a mistake, or to bring the instrument into conformity with the original intention of parties, (*c*) or if the alteration made is immaterial, no new stamp is necessary; an insertion by the *bona-fide* holder of a bill, of his name in a blank, left to be filled up by the name of the payee, need not be stamped, for the issuing of such a bill imports an authority to the holder to insert his name. (*d*) Where the bills in a suit, were originally drawn in August 1920 payable at 90 days sight, and they were accepted by the defendants and after they were accepted, the defendants feeling that they would not be able to meet these drafts on due dates,

(*a*) *Walton* v. *Hastings*, (1816) 4 Camp. 223; *Knill* v. *Williams*, (1809) 10 East 431. Cf *Suffell* v. *Bank of England*, (1882) 9 Q.B.D. 555, 574.

(*b*) *Maung Myo* v. *Ma Myin*, (1928) Rang. 263.

(*c*) *Byrom* v. *Thompson*, (1839) 11 A. and E. 31; *Kershaw* v. *Cox*, (1800) 3 Esp. 246; *Downes* v. *Richardson*, (1822) 5 B. & Ald. 674; *Farquhar* v. *Southey*, (1826) 2 C. & P. 497.

(*d*) *Cruchley* v. *Clarance*, (1813) 2 M. & S. 90; see notes to sec. 20 of the N. I. Act.

requested the plaintiffs to write to the drawer to get the time extended, and time was extended by 4 months from the due dates of the bills of exchange, and due intimation was given to the defendants for acceptance and the defendants re-accepted them, with the memorandum of due date in red ink altered, it was held that each of these bills became a second instrument and was chargeable with fresh stamp. (*a*) The above decision must be taken to be over-ruled by the decision of their Lordships of the Privy Council in *Pestonji and Co.* v. *Cox & Co.*, (*b*) unless "the fact of acceptance with the circumstances under which it took place", in that case which are not fully stated, introduce a sufficient distinction.

The proviso to the section exempts certain indorsements from the operation of the section. Among them are transfers by indorsements of a bill of exchange, cheque or promissory note. An assignment of a bill or note as a chose-in-action may be made upon the same paper under the proviso.

Instruments other than bills,* and notes executed out of British India.

Sec. 18 (1). Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange,* or promissory note, may be stamped within three months after it has been first received in British India.

(2). Where any such instrument cannot, with reference to the description of the stamp, prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector who shall stamp the same, in such manner as the Governor-General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

NOTES.

An acknowledgment chargeable with a duty of one anna which is executed outside British India must be stamped within three months after it has been first received in British India, and if it is not stamped within that time, it cannot be admitted in evidence. The proviso as to payment of duty and penalty under section 35, does not

---

(*a*) *International Banking Corporation* v. *H. Pestonji & Co.*, 49 Bom. 351.
(*b*) 52 Bom. 589 (P.C).

*In this sub-section, the word 'cheque' was omitted by Act V of 1927.

Appx. J.

apply to such an instrument as it is chargeable with a duty of one anna only. (a)

Bills* and notes drawn out of British India.

Sec. 19. The first holder in British India of any bill of exchange, payable otherwise than on demand * or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or indorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same:

Provided that,—

(a) if, at the time any such bill of exchange,* or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled;

(b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

NOTES.

This section goes further than section 35 (1) of the English Stamp Act in requiring a foreign bill to be stamped before it is presented for acceptance. If the holder does not do any of the acts mentioned in the section, he can sue on the instrument without stamping it. (b) So, where a person merely brings a suit on a foreign promissory note, it is admissible in evidence without any stamp being affixed thereto (c); and it has been suggested that even if a stamp were necessary, it will be sufficient if the same is affixed at the time of the decree.

(a) *Ali Mohammad* v. *Jagannath*, (1928) All. 666.

* In this section, the words "payable otherwise than on demand" were added by Act V of 1927; and the word 'cheque' in the two places noted has been omitted.

(b) *Mahomed Rowthan* v. *Mahomed Husain*, 22 Mad. 337; *Ram Singh* v. *Parumal*, 32 I.C. 582; *Lakshmammal* v. *Narasimha*, 25 M. L. J. 572.

(c) *Kunhi Coya* v. *Panikka Vittil Assan Bava*, 36 M. L. J. 188.

Conversion of amount expressed in foreign currencies.

Sec. 20 (1). Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any currency other than that of British India, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

(2) The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, prescribe* a rate of exchange for the conversion of British or any foreign currency into the currency of British India for the purposes of calculating stamp duty, and such rate shall be deemed to be the current rate for the purposes of sub-section (1). †

Effect of statement of rate of exchange or average price.

Sec. 22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Instruments reserving interest.

Sec. 23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

NOTES.

The section applies as much to compound interest as to simple interest, and a stipulation to pay such interest is not liable to be stamped separately. (*a*)

Facts affecting duty to be set forth in instrument.

Sec. 27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

---

*For Notification prescribing such rates, see No. 1281—S.R., dated the 17th March, 1899—Gazette of India, 1899, Pt. I, p. 153; Gen. R. and O.

† See Donogh's Stamp Act (8th Edn.) 747 *et seq.*

(*a*) *Barisal Rindan* v. *Sital*, 34 C.W. N. 911.

Appx. J.

NOTES.

Non-compliance with the provisions of the section makes the parties liable to punishment under section 64.

Duties by whom payable.

Sec. 29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,—

(a) in the case of any instrument described in any of the following Articles of Schedule I ‡, namely :—

* *

No. 13 (Bill of exchange),

* *

No. 49 (Promissory note),

* *

by the person drawing, making or executing such instrument.

* * * * *

(e) in the case of an instrument of exchange—by the parties in equal shares ;

* * * * *

NOTES.

The section gives full scope for the parties to adjust the burden of the duty.

Obligation to give receipt in certain cases.

Sec. 30. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part-satisfaction of a debt any movable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same :

* * * * *

NOTES.

The obligation to give a duly stamped receipt arises only when such receipt is demanded by the payee.

‡ Legislative changes : (for Madras only). In Cl. (a) of this section after the word and figure "Schedule I", the words, figure and letter "or the corresponding articles of Sch. I-A., as the case may be", were inserted by Madras Act VI of 1922.

Certificate by Collector.

Sec. 32. (1). When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and—

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by indorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an indorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and if chargeable with duty shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the Collector to indorse—

(a) any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be; or

(b) any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India; or

(c) any instrument chargeable with the duty of one anna or half an anna,* or any bill of exchange or promis-

---

* The words "or half an anna" were inserted by sec. 3 of the Indian Stamp (Amendment) Act V of 1906.

Appx. J.

sory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

NOTES.

The Collector is not authorised to indorse any bill of exchange or promissory note when it is not drawn on a paper not duly stamped. But, it has been held by the Allahabad High Court, that if the Collector indorsed an unstamped promissory note, such note was admissible in evidence (*a*); and this decision has been referred to by the Bombay High Court without any dissent. (*b*) The decision of the Allahabad High Court is contrary to the plain provisions of this section and to the rulings of the Court in England, in cases (*c*) arising under similar provisions of the English Stamp Act.

Examination and impounding of instruments.

Sec. 33. (1). Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

* * * * *

NOTES.

Where a certificate of sale granted by a Sub-Judge to an auction-purchaser, which bore an insufficient stamp, was sent to the Sub-Registrar, who finding the stamp insufficient, informed the Sub-Judge, and the latter thereupon called back the certificate and got the deficient stamp affixed, it was held that the sale-certificate was not an instrument within section 33, as it was executed by the Subordinate Judge himself, and consequently could not be said to come before him in the performance of his function, and also that the certificate having been handed over to the auction-purchaser could not be impounded by the Court, as it was not in its possession on the date of the discovery of the deficiency of stamp. (*d*)

Instruments not duly stamped inadmissible in evidence, etc.

Sec. 35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive

(*a*) *Girdhari* v. *Jagannath*, 3 All. 115; Cf. *Choley Lal* v. *Girraj*, 93 I.C. 63.

(*b*) *Devachand* v. *Hirachand*, 13 Bom. 449.

(*c*) *Green* v. *Davies*, (1825) 4 B. & C. 235; *Roderick* v. *Hovil*, (1811) 3 Camp. 103.

(*d*) *Collector of Ahmednagar* v. *Rambhau Tukaram*, (1930) Bom. 392 (F.B.).

evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provided that—

(a) any such instrument not being an instrument chargeable with a duty of one anna * or half an anna only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

* * * *

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

NOTES.

Bills of exchange or promissory notes are not admissible in evidence even on payment of proper duty and penalty if they have not been duly stamped. But, where the notes fall under the definition of 'bonds,' they may be admitted in evidence as bonds, on payment of penalty. Thus, a letter undertaking to repay a loan, can be sued upon though unstamped, on payment of penalty. (*a*) Where the defendants passed to the plaintiff an instrument which ran as follows: "We have this day received from you Rs.... ..Interest thereon has been fixed at the rate of.....The said interest is to be paid every month as it accrues due, and the period fixed in respect of the above written amount is three years," it was held that the instrument was not a promissory note falling under the absolute prohibition of the section. (*b*) A copy of an unstamped original, cannot be accepted in evi-

* The words "or half an anna" were inserted by sec. 3 of the Indian Stamp (Amendment) Act V of 1906.

(*a*) *Bharata Pisharodi* v. *Vasudevan*, 27 Mad. 1.

(*b*) *Pratapchand* v. *Purshotamdas*, 18 Bom. L. R. 124.

Appx. J.

dence even on payment of the penalties recoverable in respect of the original. (*a*) The prohibition contained in this section does not apply to proceedings in Criminal Courts. (*b*) But, a bill of exchange or promissory note drawn or made out of British India is admissible in evidence, though it is unstamped, if it had not been presented for acceptance or payment, or indorsed, transferred or otherwise negotiated in British India.

If a bill or note is inadmissible in evidence, can the payee sue on the original consideration? The answer to this question cannot be stated in a better way than by quoting the following passage from the judgment of Garth, C. J. in *Sheikh Akbar* v. *Sheikh Khan*, (*c*) the leading case on the subject. "Where a cause of action for money is one, complete in itself, whether for goods sold or for money lent or for any other claim, and the debtor then gives a bill or note to the creditor, for payment of the money at a future time, the creditor, if the bill or note is not paid at maturity, may, always as a rule, sue for the original consideration, provided that he has not indorsed or lost or parted with the bill or note under such circumstances as to make the debtor liable upon it to some third person. In such cases, the bill or note is said to be taken by the creditor on account of the debt, and if it is not paid at maturity, the creditor may disregard the bill or note and sue for the original consideration.

"But, when the original cause of action is the bill or note itself, and does not exist independently of it, as for instance, when in consideration of depositing money with B, B contracts by a promissory note to repay it with interest at six months' date, there is no cause of action for money lent or otherwise, than upon the note itself, because the deposit is made upon the terms contained in the note, and no other. In such a case, the note is the only contract between the parties, and if for want of proper stamp or some other reason, the note is not admissible in evidence, the creditor must lose his money." The reason of the rule will appear from the nature of the claim in each case. In the former class of cases where the cause of action is complete before the bill or note is given, it is generally thrown upon the defendant to prove that he gave the bill or note in satisfaction of the original debt; and as the instrument is unstamped, he is unable to put the note in evidence, and the plaintiff is allowed to succeed on the original debt. In the latter class, however, where the action is based

---

(*a*) *Nanakchand* v. *Muhammad Afzal*, 16 I. C. 950.

(*b*) *Jagannath* v. *Deokinandan*, 29 I. C. 671.

(*c*) 7 Cal. 256; see also *Somasundaram* v. *Krishnamurti*, 17 M. L. J. 126.

on the unstamped instrument, the plaintiff to prove his claim has to rely on the instrument itself, and as it is unstamped, he cannot tender it in evidence. (*a*)

Though the principle as stated by Garth, C.J., is clear enough, difficulties arise in determining to which of the two classes mentioned above, a particular case falls under. Sometimes we find Judges arriving at different conclusions on the same set of facts. But, the principle above set forth, is beyond any doubt and has been applied by all the High Courts in the cases before them.

An unstamped promissory note does not prevent the lender from suing on the original consideration, if the pleadings are properly framed for that purpose. (*b*) And the Court can allow an amendment of the pleadings where the plaint was not originally framed on that basis; (*c*) but such an amendment will be refused when an application is made therefor at a late stage of the suit, (*d*) and also when the suit on the original cause of action has become barred by limitation. (*e*) Where there is a completed contract between the plaintiff and the defendant independent of the unstamped instrument, received on account of a loan already made, a suit on the original consideration is maintainable. (*f*) But, if a person lends money to another, and the contract is reduced to the form of writing at the time of the transaction, the terms of the contract must be proved by the contract itself, and if the

---

(*a*) *Valiappa Ravuthan* v *Mahommed Khasim*, 5 Mad. 166.

(*b*) *Golapchand* v. *Thakurani*, 3 Cal. 314; *Hiralal* v. *Datadin*, 4 All. 135; *Banarsi Prasad* v. *Fazal Ahmad*, 28 All. 298; *Sadasuk* v. *Sir Kishan*, 46 Cal. 663, 667 (P.C.); *Ram Ragubhir* v. *United Refineries*, 9 Rang. 56; *Kundan Lal* v. *Bhikari*, 51 All. 530; *Cf.* 63 M. L. J. (N. R. C.) 52.

(*c*) *D. Nagamma* v. *Tirumala*, 12 L. W. 147; *Venkatachalapati* v. *Ramakrishna*, (1930) Mad. 168; *Maung Shwe Myat* v. *Maung Po Sin*, 3 Rang. 183 (F.B.). Compare *Rajindar* v. *Tekchand*, (1923) Lah. 628; *Nachimuthu* v. *Andiappa*, 6 L. W. 630.

(*d*) *Mothoora Mohun* v. *Peary Mohun*, 4 Cal. 259.

(*e*) *Alimane Sahiba* v *Kolisetti Subbarayudu*, 36 L. W. 470.

(*f*) *Yarlagadda Veera Ragavayya* v. *Gorantla Ramayya*, 29 Mad. 111; *Krishnaswami* v. *Rangaswami*, 7 Mad. 112; *Lehna Singh* v. *Ahmad Din*, 19 I.C. 436 (Punj); *Bally Singh* v. *Bhugwan Das*, 23 I.C. 975 (Bur.); *Gokuldass* v. *Paramanand*, 8 I. C. 281 (Nag); *Mirza Hidayat* v. *Nga Kyaing*, 24 I. C. 721; *Saminatha* v. *Radakrishna*, 15 M. L. T. 243; *Kodali Mallaya* v. *Tangoppala Ramayya*, 21 M. L. J. 462; *Nahusa* v. *Phulchandsa*, 14 I. C. 399 (Nag.); see also *Subramanian* v. *Muthiah*, 35 Mad. 639; *Ram Bahadur* v. *Dasuri Ram*, 17 C. L. J. 399; *Dawson's Bank* v. *C. R. V.V. Chetty*, 1 Rang. 121; *Brahma Deo* v. *Ram Kishun*, (1921) Pat. 318; *Chotolal* v. *Gumani*, (1926) Pat. 432; *Saligram* v. *Radhay*, (1931) All. 560; *Ranchhod* v. *Ravjibhai*, (1926) Bom. 357; *Hakim Rai* v. *Gangaram*, 7 Lah. 206; *Kashi Prasad* v. *Pannalal*, (1923) All. 529; *Hakim Rai* v. *Gangaram*, (1926) Lah. 356; *Nazir Khan* v. *Ram Mohan*, 53 All 114 (F. B). Compare *Mian Bakhsh* v. *Bodhiya*, 50 All. 839 (F. B.); *Nachimuthu* v. *Andiappa*, 6 L. W. 630.

Appx. J.

note is unstamped, oral evidence of the debt cannot be admitted. But, on this point, however, the decisions have not been uniform. While the High Courts of Madras (*a*), Allahabad (*b*), Lahore (*c*), and Bombay (*d*) have adopted the above view, the Calcutta (*e*), Rangoon (*f*) and the Patna (*g*) High Courts have taken a different view. The latter view is based on the ground that as soon as the money is advanced, there is an obligation to repay, thus giving rise to a cause of action complete in itself, and the note refers only to that obligation and the rate of interest. Want of necessary stamp only renders the document inadmissible in evidence; but does not affect the validity of any contract contained therein. (*h*) Where certain hundis were renewed from time to time, but the last of the hundis so taken was insufficiently stamped, it was held that the plaintiff could rely upon the hundis that were given prior to the last renewal. (*i*) Unstamped documents may be used for a collateral purpose such as, an acknowledgment of a pre-existing liability, (*j*) or for obtaining some relief in respect of the note other than a decree for the money due thereon, (*k*) or to refresh the memory of a witness who swears to the loan. (*l*) Even in cases where the cause of action is inseparable from the exis-

---

(*a*) *Pothi Reddi* v. *Velayudhasivan*, 10 Mad. 94; *Somasundara* v. *Krishnamurthi*, 17 M. L. J. 126; *Ramaswami* v. *Muthusami*, 30 I. C. 481; *Chinnappa* v. *Muthuraman*, 9 M. L. T. 281; *Muthu Sastrigal* v. *Visvanatha Pandara Sannadhi*, 38 Mad. 660; *Kodali Mallaya* v. *Tangoppala Ramayya*, 21 M. L J. 462; *Ammalu* v. *Namagiri*, 33 M L. J. 631; *Pulugarta Somaraju* v. *Venkata*, 20 L.W. 943; *Alimani Sahiba* v. *Koli Setti*, 36 L.W. 470; see also 63 M. L. J. (N. R. C.) 10.

(*b*) *Parshotam Narain* v. *Taley Singh*, 26 All. 178; *Ramsarup* v. *Jasoda Kunvar*, 34 All. 158; *Nazir Khan* v. *Ram Mohan*, 53 All. 114 (F.B).

(*c*) *Chandasingh* v. *Amritsar Banking Co.*, 2 Lah. 330, 334; *Gurudas* v. *Ishardas*, 3 Lah. L. J. 157; *Hakim Rai* v. *Gangaram*, 7 Lah 206; *Ramjas* v. *Shababuddin*, (1927) Lah. 89.

(*d*) *Damodar* v. *Atma Ram*, 12 Bom. 443; *Jacob and Co.* v. *Vicumsey*, 29 Bom. L. R. 432; but see *Krishnaji* v. *Rajmal*, 24 Bom. 360.

(*e*) *Sudhirchandra* v. *Gobindachandra*, 45 Cal. 538; but see *Ankur Chandra* v. *Modhub Chandra*, 21 W R. 1; *Prosunnomath Lahiri* v. *Trippoo Sundaree Dabee*, 24 W. R. 88; *Babu Ram* v. *Dasuri Ram*, 19 I. C. 840.

(*f*) *Maung Lee Gale* v. *Prothapdo*, (1925) Rang. 37; *Ram Raghubir Lal* v. *United Refineries*, 9 Rang. 56; but see *Bally Singh* v. *Bhagwandass*, 23 I.C. 975.

(*g*) *Dhaneswar* v. *Ramrup*, 7 Pat. 845; but see *Choto Lal* v. *Gumani* (1926) Pat. 432.

(*h*) *Pearey Lal* v. *Sukhan Ram*, 93 I. C. 960; *Joyman Bewa* v. *Easin Sarkar*, 53 Cal. 515.

(*i*) *Jagan Prasad* v. *Indar Mal*, 36 All. 259; *Budhumal* v. *Gokal Chand*, 7 Lah. 113.

(*j*) *Fatechand Harchand* v. *Kisan*, 18 Bom. 614; see also *Chami* v. *Ana Pattar*, 33 I. C. 661; *Gould* v. *Coombs*, (1835) 14 L. J. (N. S.) C. P. 175; *Upendra Nath Banerjee* v. *Umesh Chandra Banerjee*, 15 C. W. N. 375. See *Mulji Lala* v. *Lingu Makaji*, 21 Bom. 201, where *Fatehchand Harachand* v. *Kisan*, 18 Bom. 614 is dissented from; see also *Rakkappan* v. *Suppiah*, (1930) Mad. 485; but see *Rakhal Chandra* v. *Ramachandra*, (1921) Pat. 292; *Joti Parshad* v. *Brij Raj*, (1923) Lah. 29; *Bishunath* v. *Ishri Dayal*, 112 I.C. 247; Cf. *Natarajulu* v. *Subramaniam*, 45 Mad. 778; *Nachiappa* v. *Audiappa*, 6 L. W. 630.

(*k*) *Baboo Lall* v. *Joy Lall*, 24 Cal. 533.

(*l*) Ameer Ali, Evidence Act, p. 778.

tence of a bill or note, a decree may be given in favour of the plaintiff upon the admission of the defendant of his liability. (*a*)

Admission of instrument where not to be questioned.

Sec. 36. Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

NOTES.

In order that a document can be treated as admitted in evidence, it is not necessary that there should be a written order deciding the admissibility of the document. If a judge after taking evidence regarding its execution, allows it to be let in, he must be deemed to have admitted the document. (*b*) But, if a judge does not apply his mind to a consideration of its admissibility, it cannot be said that the document was admitted ; and therefore it is open to the judge to reject the hundi as not properly stamped. (*c*) This section is of a mandatory nature and applies also to a Court of Appeal or revision, (*d*) independently of the fact whether the admissibility was challenged in the lower Court or not. (*e*) But the appellate or revisional Court is not bound to admit the document any further or for any other purpose than the lower Court has admitted it. (*f*) When once a promissory note is admitted by a Court on payment of a penalty, it cannot afterwards reject the document on the ground that it had not been duly stamped. (*g*)

(*a*) *Damodar* v. *Atmaram*, 12 Bom. 443, (Birdwood, J.) ; *Pramatha Nath* v. *Dwarka Nath*, 23 Cal. 851 ; *Krishnaji* v. *Rajmal*, 24 Bom. 360 ; *Muthu Karuppa Kaundan* v. *Rama Pillai*, 3 M. H. C. R. 158 ; but see *Damodar* v. *Atmaram*, 12 Bom. 443, (Jardine, J.) ; *Chenbasapa* v. *Lakshman*, 18 Bom 369 ; see also *Kodali Mallaya* v. *Tangoppala Ramayya*, 21 M. L. J. 462 ; *Bally Singh* v. *Bhagwan Dass*, 7 Bur. L. T. 95 : 23 I. C. 975 ; *Jacob & Co.* v. *Vicumsey*, 29 Bom. L. R 432; *Alimani Sahiba* v. *Kolisetti*, 36 L. W. 470.

(*b*) *Gurudasmal* v. *Guranditta*, 119 I. C. 485.

(*c*) *Venkanna* v. *Parasuram*, 53 Mad. 137.

(*d*) *Attar Singh* v. *Moolchand*, (1927) Lah. 876.

(*e*) *Jagdip* v. *Firangi*, (1928) Pat. 155 ; *Nirodi Basani* v. *Sitalchandra* (1930) Cal. 577.

(*f*) *Gopala Padayachi* v. *Rajagopal Naidu*, (1926) M. W. N. 757.

(*g*) *Devachand* v. *Hirachand*, 13 Bom. 449 ; *Reference under Stamp Act*, 8 Mad. 564, 566 ; *Sugappa* v. *Govindappa*, 12 M. L. J. 351 ; *Abid Husain* v. *Asghar Husain*, 19 I. C. 445 ; *Basiruddin Ahmed* v. *Kalika Prosad Singh*, 7 I. C. 582 ; *The Bombay Co. Ltd.* v. *National Jute Mills Co., Ltd.*, 39 Cal. 669 ; see *Chunilal Tulsiram* v. *Mulabai*, 12 Bom. L. R. 466 (where the document was inadvertently allowed to be exhibited.) *Sundar Das* v. *People's Bank of India*, 16 I. C. 834 (Punj), (where the document was marked, but no note of having admitted it). *Jagdip* v. *Firangi Singh*, (1928) Pat. 155 ; *Nirode* v. *Sital*, (1930) Cal. 577.

Appx. J.

Nor can its admissibility be challenged in appeal (*a*) or any subsequent proceeding incidental to the suit. (*b*)

This section applies only to a case where what is in evidence is sought to be expunged by a party who objects that the evidence is wrongly admitted, so that the admissibility of a promissory note in evidence could be called in question after an *ex parte* decree was set aside. (*c*)

Collector's power to stamp instruments impounded.

Sec. 40 (1). When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty of one anna or half an anna* only or a bill of exchange or promissory note, he shall adopt the following procedure :—

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by indorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be:

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ‡ ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention

(*a*) *Nagappa Chetty* v. *V. A. A. R. Firm*, 49 M. L. J. 306; *Punchanand* v. *Taramoni*, 12 Cal. 64; *Loob Lal* v. *Jungle Singh*, 3 Cal. 787; *Ma Nyun* v. *Maung San Mya*, 6 Rang. 590; *Abinash* v. *Nagendra*, (1931) Cal. 480; *Venkateswara* v. *Ramanatha*, 19 I. C. 472; *Venkatarama* v. *Chella Pillai*, 40 M. L. J. 479.

(*b*) *Joyman Bewa* v. *Easin Sarkar*, 30 C. W. N. 609; *Jagdip Singh* v. *Firangi Singh*, 6 Pat. 765; *Gopala* v. *Rajagopala*, (1926) Mad. 1148; *Venkateswara* v. *Ramanatha*, (1929) Mad. 622; *Alagappa* v. *Narayana*, 63 M. L. J. 548.

(*c*) *Solamalai Mudaliar* v. *Vadamalai Muthiran*, 23 M. L. J. 273.

* The words ' or half an anna ' were inserted by sec. 3 of the Indian Stamp (Amendment) Act V of 1906.

Legislative changes:—(For Bombay only)—In sub-section (1) of section 40, before the words, "one anna," the words "two annas" shall be inserted—(BOM. ACT II OF 1922.)

(For Madras only).—In sub-section (1) of section 40, after the words "half an anna only," the following shall be inserted, namely:—"or a mortgage of crop (Article 34 (a) of Schedule I-A)—chargeable under clause (aa) or (bb) of section 3 with a duty of two annas."—(MAD. ACT VI OF 1922.)

‡ The words "an amount not exceeding" were inserted by sec. 6 of the Indian Stamp (Amendment) Act (XV of 1904.)

of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

NOTES.

If the certificate is without jurisdiction, it is not conclusive. (*a*)

Power of payer to stamp bills, promissory notes* received by him unstamped.

Sec. 47. When any bill of exchange or promissory note * chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented, may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill, or note † and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill or note † shall, so far as respects the duty, be deemed good and valid:

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill or note.†

NOTES.

The section involves a curious anomaly, as it enables the maker to deduct the value of the stamp (which he is bound to pay under section 29) from the amount payable under the promissory note. (*b*) An intermediate holder of the bill is not empowered by the section to

---

(*a*) *Chotey Lal* v. *Girraj*, (1926) All. 359.

* In this section, for the words "pro missory note or cheque," the words "or promissory note" were substituted by Act V of 1927.

† In this section, for the words 'note or cheque' wherever they occurred, the words 'or note' were substituted by Act V of 1927.

(*b*) *Bhawanji* v. *Devji Punja*, 19 Bom. 635, 639.

Appx. J.

stamp it, and if he does so, the bill cannot be said to be duly stamped and made the basis of a suit. (*a*)

Allowance for spoiled stamps.

Sec. 49. Subject to such rules as may be made by the Local Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely :—

* * * *

(c) in the case of bills of exchange, payable otherwise than on demand* or promissory notes—

(1) the stamp on any such ‡ bill of exchange, signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance : provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange† to be afterwards written thereon :

(2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands :

(3) the stamp used or intended to be used for any such† bill of exchange,† or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange,† may have been presented for acceptance or accepted or indorsed, or,

---

(*a*) *Bhawanji Narsi* v. *Pitamberdas*, 86 I. C. 357 ; *Hobbs* v. *Cathie*, (1890) 6 T. L. R. 292.

* In this clause, the words 'payable otherwise than on demand,' were added by Act V of 1927, and the word 'cheque' was omitted.

‡ In this sub-clause (1), the words "or cheque" in two places, were omitted by Act V of 1927, and the word 'such' in the first line was introduced.

† In this sub-clause (3), the word 'cheque' in the 2nd and the last line, and the word 'or cheque' in the fifth and the ninth lines have been omitted by Act V of 1927, and the word 'such' in the 2nd line introduced.

being a promissory note, may have been delivered to the payee: provided that another completed and duly stamped bill of exchange,† or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill* or note:

* * * * *

Sec. 62. (1) Any person—

Penalty for executing etc. instrument not duly stamped.

(a) drawing, making, issuing, indorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange, payable otherwise than on demand* or promissory note without the same being duly stamped; or

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or

(c) voting or attempting to vote under any proxy not duly stamped;

shall for every such offence be punishable with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued, without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

---

* In this clause, the word 'cheque' has been omitted, and the words 'payable otherwise than on demand' were inserted by Act V of 1927.

NOTES.

A bill is not deemed to be issued for stamp purposes in England, till it has reached the hands of a holder for value. (*a*) In this section, the word is used in its ordinary sense. The "accepting" in this section does not mean receiving, but executing as an acceptor; and so, receiving an unstamped promissory note is not an offence under the section. (*b*) It has been held that the mere signing, otherwise than as a witness, of an instrument chargeable with duty without the same being duly stamped is an offence, and no question of intention arises. (*c*)

Penalty for failure to cancel adhesive stamp.

Sec. 63. Any person required by section 12 to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

Sec. 64. Any person who, with intent to defraud the Government,—

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth; or,

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or,

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act; shall be punishable with fine which may extend to five thousand rupees.

NOTES.

It has been held that a mere non-payment of proper stamp duty is no offence. (*d*) If, in a deed of gift, the value of the property is intentionally omitted with a view to defraud the revenue, a prosecution will lie under this section. (*e*) In construing clause (c) of this

(*a*) B. of Ex. Act, sec. 2.

(*b*) *Queen* v. *Ghulam Hussain*, 7 Mad. 71; *Queen-Empress* v. *Nihal Chand*, 20 All. 440.

(*c*) *Emperor* v. *Panna Lal*, 24 A.L.J. 358.

(*d*) *Brojendra Nath Bakshi* v. *Emperor*, 45 I. C. 275.

(*e*) In the matter of *Muhammad Muzaffar Ali*, 44 All. 339 (F. B.).

section, the words 'any other act' must be taken to mean an act of a like nature to those which are specified in clauses (a) and (b); and the mere fact that a person puts a stamp on a document which he knows to be not of proper value would not come within clause (c), unless there is an intention to defraud the Government. (*a*) The person in whose favour the document is executed is not liable under this section. (*b*)

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

Sec. 67. Any person drawing or executing a bill of exchange* payable otherwise than on demand or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped, the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

Penalty for post-dating bills, and for other devices to defraud the revenue.

Sec. 68. Any person who—

(a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made; or,

(b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same; or,

(c) with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act, or any other law for the time being in force; shall be punishable with fine which may extend to one thousand rupees.

NOTES.

The execution of a document, which requires on its face to be stamped and is not stamped, is not an offence under this section. (*c*)

(*a*) *Chhakma Chopra* v. *Emperor*, 44 Cal. 321.

(*b*) *Panchanan Roy* v. *Emperor*, (1929) Cal. 723.

* The words 'payable otherwise than on demand' have been inserted by Act V of 1927.

(*c*) *Queen-Empress* v. *Somasundaram Chetti*, 23 Mad. 155.

Appx. J.

SCHEDULE I.

STAMP—DUTY ON INSTRUMENTS.

Description of Instrument.	Proper Stamp-duty.
1. **ACKNOWLEDGMENT** of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass book) or on a separate piece of paper when such book or paper is left in the creditor's possession: Provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.	One anna.
NOTES. Where a person writes to say, "I shall pay you rupees in the month of magh, I request you should wait for 2 months," it was held that this was an acknowledgment. (*a*) But, in an account between the parties headed 'Account current' the words "I accept this as correct" and subscribed with signature, it was held the instrument was not an acknowledgment of debt (*b*); where however a balance was struck by the defendant, the Lahore High Court held that the entry was an acknowledgment. (*c*) A letter stating "accounts are with——and if you will see him, he will be pleased to settle you up" is an acknowledgment. (*d*)	
5. **AGREEMENT OR MEMORANDUM OF AN AGREEMENT,—**	
(a) if relating to the sale of a bill of exchange;	Two annas.
	in Bombay ... Four Annas *
	in Punjab ... Four "
	in Assam ... Three "
	in C. P. ... Three "
	in Bengal ... Three "
	in Madras ... Three "
	in U. P. ... Three "
* * * *	* * *

(*a*) *Velchand Ganesh* v. *Bhagwandas*, 32 Bom. L. R. 1390; *Pandurang* v. *Maruthi*, 30 Bom. L. R. 688.

(*b*) *Galstaun* v. *Heutchison*, 39 Cal. 789.

(*c*) *Relu Mal* v. *Shoran*, 132 I. C. 844; *Krishna Das* v. *Sobhasing*, 121 I.C. 873; *Deoraj Tiwari* v. *Indresan Tewari*, 8 Pat. 706; *Mahadeo Kori* v. *Sheoraj*, 41 All. 169; *Bullab Das* v. *Puran*, 5 Luck 218; *Ma Thinza* v. *Veera Kalai*, (1931) Rang. 193.

(*d*) *Mohamed Abdulla* v. *Macdonald*, (1930) All. 124.

* As amended by the Local Legislatures.

Description of Instrument.	Proper Stamp-duty.		
	If drawn singly	If drawn in set of two, for each part of the set	If drawn in set of three, for each part of the set.
13. BILL OF EXCHANGE [as defined, by section 2 (2) ‡] not being a Bond, bank-note or currency-note—			
(a) * * * *	*	*	*
(b) where payable otherwise than on demand, but not more than one year after date or sight—	RS. A. P.	RS. A P.	RS. A. P.
if the amount of the bill or note does not exceed Rs. 200	0 3 0	0 2 0	0 1 0
if it exceeds Rs. 200, and does not exceed Rs. 400	0 6 0	0 3 0	0 2 0
Do 400 do " 600	0 9 0	0 5 0	0 3 0
Do 600 do " 800	0 12 0	0 6 0	0 4 0
Do 800 do " 1,000	0 15 0	0 8 0	0 5 0
Do 1,000 do " 1,200	1 2 0	0 9 0	0 6 0
Do 1,200 do " 1,600	1 8 0	0 12 0	0 8 0
Do 1,600 do " 2,500	2 4 0	1 2 0	0 12 0
Do 2,500 do " 5,000	4 8 0	2 4 0	1 8 0
Do 5,000 do " 7,500	6 12 0	3 6 0	2 4 0
Do 7,500 do " 10,000	9 0 0	4 8 0	3 0 0
Do 10,000 do " 15,000	13 8 0	6 12 0	4 8 0
Do 15,000 do " 20,000	18 0 0	9 0 0	6 0 0
Do 20,000 do " 25,000	22 8 0	11 4 0	7 8 0
Do 25,000 do " 30,000	27 0 0	13 8 0	9 0 0
and for every additional Rs. 10,000 or part thereof, in excess of Rs. 30,000.	9 0 0	4 8 0	3 0 0
(c) where payable at more than one year after date or sight.	The same duty as a bond (No. 15)* for the same amount.		
* * * *	*	*	*
37. LETTER OF CREDIT, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn. (*a*)	Two annas.§		
42. NOTARIAL ACT, that is to say, any instrument, indorsement, note, attestation, certificate or entry not being a Protest (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public.	One Rupee in Madras, Rupee one, and annas eight. in Bombay Two rupees. in Bengal Do in Punjab Do in Assam Do in U. P. Do		

‡ In this Article, 'and 3' in the 2nd line, were omitted by Act V of 1927, as well as "(a) where a payable, on demand—one Anna," in the 4th line.

* See the Indian Stamp Act (II of 1898) Schedule I.

† Here were words.

[21. Cheque "[as defined by sec. 2 (7)]—one anna." They were omitted by Act V of 1927.

§ These words were substituted for the words 'one anna' by the Indian Stamp (Amendment) Act, 1923 (XLIII of 1923).

(*a*) Nature and function of, see *Chandanmull* v. *National Bank*, 51 Cal. 43; *Sassoon & Sons* v. *International Banking Corporation*, 55 Cal. 1 (P.C.).

Appx. J.

Description of Instrument.	Proper Stamp-duty.
†49. **PROMISSORY NOTE** [as defined by sec. 2 (22.)]	
(a) when payable on demand —	
(*i*) when the amount or value does not exceed Rs 250;	One Anna.
(*ii*) when the amount or value exceeds Rs 250, but does not exceed Rs. 1,000.	Two Annas.
(*iii*) in any other case.	Four Annas.
(b) when payable otherwise than on demand.	The same duty as a Bill of Exchange (No. 13) for the same amount payable otherwise than on demand.
NOTES. In spite of the enhancement of duty on the demand promissory notes, the public through inadvertence continued to affix the same stamp to notes of the value of over Rs. 250, and as the defect could not be cured by the Collector under section 32, nor could it be admitted in evidence even on payment of penalty under section 35 or by the Collector under section 40, there was great hardship caused: to relieve the same, Act XIII of 1924 (The Indian Specified Instruments Stamp Act) was passed, which enacted that promissory notes for over Rs. 250 and executed after the 30th September 1923 and before the 1st April 1924, which were stamped with the stamp that were payable under the amended Act should for all purposes be treated as duly stamped.	
50. **PROTEST OF BILL OR NOTE.** that is to say, any declaration in writing made by a Notary Public or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note.	One Rupee. in Punjab ... Two Rupees.* in Bombay ... Two „ in Bengal ... Two „ in Madras ... Two „ in Assam ... Two „ in U. P. ... Two „
62. **TRANSFER** (whether with or without consideration)—	
* * * * * *	
Exemptions.	
Transfers by indorsement.	
(a) of a bill of exchange, cheque or promissory note;	
* * * *	
NOTES. The exemption would not cover cases where a bill or note is assigned over as a chose-in-action by a writing on the back of the bill or note.	

† Substituted for the original Article, by sec. 2 (iii) of the Indian Stamp (Amendment) Act, 1923 (XLIII of 1923).

APPENDIX K.

THE PROMISSORY NOTES (STAMP) ACT (XI OF 1926)

(*An Act to provide for the validation of certain promissory notes.*).

Whereas it is expedient to provide for the validation of certain promissory notes stamped with postage stamps of the denomination of two or four annas; it is hereby enacted as follows:—

(1) This Act may be called the Promissory Notes (Stamp) Act, 1926.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

2. A promissory note payable on demand for an amount exceeding two hundred and fifty rupees, executed after the 30th day of September, 1923, and before the 5th day of January, 1925, and stamped with an adhesive stamp or adhesive stamps inscribed for postage and of the value required by the law in force at the time the promissory note was executed, shall not, by reason only of the fact that the stamp or the stamps or any of them is or are of a description other than that required by such law, be deemed for any of the purposes of the Indian Stamp Act, 1899, or of the rules made thereunder, not to have been duly stamped.

NOTES.

The Validating Act has no reference to a case where a promissory note was not stamped with a stamp of the value required by law in force at the time the promissory note was executed. It was intended only to validate cases where the promissory note bore sufficient stamp, but the stamps used were inscribed "for postage." The Act did not intend to validate documents insufficiently stamped. (*a*)

(*a*) *Ambika Charan* v. *Kalipada Bhattacharya*, 110 I. C. 747.

APPENDIX L.

THE INDIAN COMPANIES ACT (VII OF 1913).

(*Provisions applicable to Negotiable Instruments*).

Bills of exchange and promissory notes.

Sec. 89. A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted, or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority, express or implied.

NOTES.

See the notes to sections 26 and 27, of the Negotiable Instruments Act.

GENERAL INDEX

ABSCONDING—

of drawee or maker, as excuse for non-presentment, 309; as excuse for no notice, 412

of acceptor, a ground for protest for better security, 420

ABSENCE—of party as excuse for non-presentment, 310; for no notice, 413

ACCEPTANCE—See ACCEPTOR: PRESENTMENT: ACCOMMODATION

what is, 54 : in case of several drawees, 170 : in case of several drawees not partners, 172, **S. 34**

of a bill of exchange if qualified, discharges previous parties, 365, **S. 86**

how made, 53 : to be on the bill, 53 : on its face or back, 54 : cannot be verbal under the Act, 55

incomplete without delivery or communication, 54, 216

of bills, 53-56 : once dishonoured, 54, 167 : with forged indorsements, 196, **S. 41**, with drawer's name forged, 197 : drawn in fictitious name, 198, **S. 42** : of incomplete bills, 54

by whom, 46, 55, **Ss. 33 & 34**; by several drawees, 55, 170: by stranger, 46, 55, 172: by agent of drawee, 170: by drawees partners, 170 : by not partners, 172 : **S. 34** : by one of several drawees, 170 : by drawees in case of need 172 : by firm or corporation, 171; when drawer dead, 54

of a cheque, 50; of bills in sets, 56, 498

obligation incurred by, 164, **S. 32**; obligation to pay after, 48

ratification of, 172

revocation of, 54, 217

made under mistake, 217

consideration for, 54; cross-acceptances, 206

kinds of, qualified, 365, **S. 86** : when only some drawees accept, 170, 368; conditional, 366; condition to be apparent, 368, 369: consent to, 369; dishonour by, 389

partial, 367; as to place, 367; as to time, 368; when only some drawees accept, 170, 368

effect of, 368

presumption as to time of, 464-465

ACCEPTANCE SUPRA PROTEST OR FOR HONOUR

what is, 55, 440, **S. 108**
object of, 422
may be made even without previous protest, 172, 441
who can make, 440, **S. 108**
whether holder bound to take, 442
of pro-notes, 442
liability under, 444, **S. 111** : of acceptor, 446 : on the instrument, 444
how made, 442, **S. 109** : for part of sum, 442: under hand of party or agent, 443
for whom made,
may be generally for the bill, 443; presumption in such cases, 443 : if not specified, effect, 444, **S. 110**

ACCEPTOR—

who is, 53, **S. 7**; who can be, 55, 169: only drawee, 169, **S. 33**
of bills in sets, 56: of a promissory note, 32
no series of acceptors, 170
by whom—by agent, 170 ; by several partners, 170
contract of, 165
liability of, 164, **S. 32**, 287 : is primary, 167 : as principal party, 181, **S. 37**: to compensate holder, 168: to pay according to acceptance, 165; when drawer's name forged, 197; when bill drawn in fictitious name, 197, **S. 42**; when drawer fictitious, 198; when payee fictitious, 199; when bound, notwithstanding previous alteration, 383, **S. 88**: though endorsement forged, 196, **S. 41**
when minor not bound, 110; when corporation bound, 117.
liability of, can be varied by contract, 167
no notice necessary to, 169
presentment for payment to, 169, 289, 294, 298: when acceptor cannot be found, 310
qualification in acceptance to be apparent, 245, 368, 369
may re-issue when taking bill before maturity, 73, 275
payment by acceptor, 167, 327: extinguishes bill at maturity, 386, **S. 90**
rights of, when paying for honour, 449
estoppels against, 196, 470: to deny authority or capacity or existence of drawer, 471; or of payee, 471
but not against genuineness of drawers' signature, 471: nor that of indorser, 474
what law governs, when instruments foreign, 505
when contract with, discharges surety, 188-190

ACCEPTOR FOR HONOUR—(SUPRA PROTEST).

who is, 53, **S. 7**: who can be, 441: for part of the sum, 142
when may be discharged, 446, **S. 112**

ACCEPTOR FOR HONOUR—(*Contd.*)
not applied to pro-notes, 442
liability of, 444, **S. 111**
presentment necessary to, 446
rights of, to presentment, 445: to noting or protesting by holder, 445: can sue party prior to the party for whose honour he pays, 446
estoppels against, when drawer's name forged, 445: when endorsement forged, 445: cannot deny original validity, 469, **S. 120**; nor genuineness of signature of the party for whose honour he accepts, 470

ACCIDENT—preventing presentment for payment, 320: or giving notice of dishonour, 413

ACCOMMODATED PARTY—
payment by, 328: effect, not entitled to recover, 205.
cancellation of the name of, 344

ACCOMMODATION ACCEPTOR—
not liable to party accommodated, 167, 168: liable to a holder even after maturity, 273:
how affected, on release of party accommodated, 191-193; cancellation of the name of, 344
suit by, on payment, 387

ACCOMMODATION BILL—
nature of, 205, 207; contract of drawer on, 152, 167, 168, 185
rights of holder of, 267, **S. 59**
presentment in case of, 319
payment at maturity by acceptor of, 387.

ACCOMMODATION INDORSER—
right of 185; cannot be sued by person accommodated, 328
whether entitled to presentment for payment, 320
payment by, 329.

ACCORD AND SATISFACTION—discharge by, 347, 348.

ACCOUNT—stated without naming payee, not a note, 36

"ACCOUNT PAYEE"—cheques marked, 476, 491

ACKNOWLEDGMENT—
merely of indebtedness, not a note, 28, 29
with promise to pay, is a note, 28, 29
when amounts to waiver of notice of dishonour, 415

ACT—extension, 14, **S. 1**: not exhaustive, 11; scope of, 10.
interpretation of, according to Eng. law, 11, 14.

ACTION—See PARTIES: SUITS.
for duplicate of lost bill, 210, **S. 45-A**

ADDRESS—

sufficiency of, when notice sent by post, 402
to drawee in bill, 45.

ADHESIVE STAMPS—See STAMPS

ADMINISTRATOR—See EXECUTOR

ADMISSION—of signature by party precludes him pleading forgery 264

AFTER DATE—(Bills payable)

calculation of maturity of, 104, **S. 23**; what calendar, 105
limitation on, 100, 563
presentment for acceptance of, 276-278
presentment for payment of, 287.

AFTER SIGHT—meaning of, in bill, 99, 100, **S. 21**
note payable, when cause of action arises, 100

AGENT—See POWER: PRINCIPAL: RATIFICATION:

who is, 121 : by custom, 122
who can employ, 121
who can be employed as, 121, 122
mode of appointment of, 121, 122
effect of executing a bill by signing the name of the principal merely, 127
nature of a bill drawn on the principal by, 128
joint agents to act jointly, 128
powers of, 122, **S. 27**
authority of, 122; to bind principal, 124, 126, 127: to draw 'per pro', 122 : of special agent, 123 : by implication, 124 : construction of, strict, 122, 125 : how determined, 136: delegation of, 136
authority to receive payment means to take cash, 73: to receive notice for principal, 70; when exceeded, 122, 123, 134, 144: to deliver instrument for principal, 219: to indorse for principal, 240: to accept for drawee, 170, 171: to accept cheque when employed to collect, 73: to draw bills, not to accept or indorse, 121, **S. 27**
ratification of the act of, by principal, 135
liability of, when exceeding authority: 124, 134, 135, 144: when signing an instrument, 125, 126, 137-144, **S. 28**: how to sign, to exclude, 128, 138-143; determined from construction of document, 143; to person inducing him to sign, 143: who can enforce, 143.
negotiation by, in breach of trust, 254; malafides in, cannot affect holder in due course, 124
as agent for collection, 239, when banker as, 161: of crossed cheques, 478
presentment for acceptance to, 278

AGENT—*(Contd.)*

presentment for payment by, 288: negligence in, liability, 289.

presentment for payment to, 304: entitled to the same time, 408, **S. 96**

notice of dishonour by, 395 : to, 396

AGREEMENT—

not to sue, when discharges parties, 187, **S.** 39:

affecting negotiable instruments, 220: oral, not admissible, 523, 526: unless as a condition precedent, 525; relating to endorsement when admissible, 526: subsequent, 528.

written, 528-530; inserted subsequently, 529; or contemporaneously, 529; on a separate paper, 529; to renew, 530; not to sue at all, 259, 260, 530; not to sue for a time, 530; discharge of liability by agreement, 345

as to interest, 335, 336

ALIEN ENEMY—as party to neg. instr., 114

ALLONGE—what is, 83, 84

ALTERATION—

when material, avoids the instrument, 370, **S. 87**; in date, 372; in time or place of payment, 373, 374; in the sum payable, 375; in interest or its rate, 375; in medium of payment, 375; by adding parties, 376; by adding an attestation, 377

other material alterations, 377; of crossing, 477

when does not avoid an instrument, 378-382: made before completion, 378: to correct a mistake, 379; to effectuate intention of parties, 379; with consent, 380; when immaterial, 380

acceptor or indorser bound notwithstanding previous, 383, **S. 88**

when fresh stamp necessary, 381

discharge of parties by, 381; acceptor or indorser bound in spite of, 383, **S. 88**: even on the original consideration, 382; by payment when alteration not apparent, **S. 89**

when by indorsee, effect of, 370, **S. 87**; by stranger, 370

onus on holder to show immateriality of, 379

ALTERNATIVE PAYEE—37, 47, 77, 79

AMBIGUOUS INSTRUMENT—

what is, 87, **S. 17**; different from an inchoate instrument, 89

when drawer and drawee same person, 90, 91: when drawer and payee same, 90 : when agent draws on principal, 91; when one branch draws upon another, 90

option of holder in case of, 88, 91; when once exercised cannot be changed, 91

AMOUNT—

in note, to be certain, 34; in bill, to be certain, 46; certain even though interest or rate of exchange provided, 46, 47; certain, though payable in instalments, 47; must be money only, 35, 47

when ambiguous, how construed, 91, 92; stated differently in print and writing, 92

instrument, blank as to, 96

ANTECEDENT DEBT—as consideration, 62

ANTEDATING—a cheque, to defraud, 51

APPARENT TENOR—167, 353

ASSIGNEE (OFFICIAL)—

presentment to, 278, 279, 305; notice of dishonour to, 403

property of insolvent vests in, 116

subject to equities, 229

ASSIGNMENT—as a chose in action, 80, 229, 230: of non-negotiable pro-note, 230 : of neg. instruments, 80

assignee's right to sue in his own name, 230

suit by succeeding trustee, without, 547

AT SIGHT—meaning of, 99, **S. 21**: instruments payable, differ from those on demand, 100

ATTACHMENT—of Neg. Instr., 543, 550, 551

ATTESTATION—

purpose of, 378: adding of, material alteration, 377

ATTORNEY—powers of, 123

instruments by client to, for remuneration, 260

AUTHORITY—See AGENT

distinguished from capacity, 121

of banker to pay, how determined, 161-163: See BANKER

AVAL—186

BANK—See BANKER: BRANCH BANK

hours of presentment at, 292, 293

BANK-NOTE—

what is a, 40 : is a negotiable instrument, 12

BANKER—

defined, 24, **S. 3**, 51: under Stamp Act, 574

status of, 25, 154; relation to customer, 151, 154, 155

duties and liabilities of, under common law, 353: under B. of E. Act, 354

BANKER—(*Contd.*)

to apply funds of drawer to pay cheques, 155-157: when accounts in different branches, 156; to honour cheques according to understanding, 156, 157: when such authority determined, 161

liability to take care of bills presented, 322, **S. 77**: as if a bailee, 323

to true owner when paying a crossed cheque, 480

not liable to holder, 159, 160: but must compensate drawer, 163, 459

pass books of, 160, 161, 265, 362, 494

payment by, of partnership cheques, 158; of corporation cheques, 158; of cheques in breach of trust, 157; when payee's name forged, 357: when indorsement forged, 357; when drawer's name forged, 360, 361, of cheques drawn on branch, 157

of cheques, crossed, 468: more than once crossed, 479, **S. 127**

when to make, 156: negligence in paying, 353-356

authority to pay, when determined, 161, 163

acting as agent of customer for collection, 160; of crossed cheques, 483, **S. 131**

rights of, entitled to lien on all moneys and goods, 157; entitled to reasonable time to look into accounts of customer, 156

may mark cheques as good, 160

protected by payment in due course, 354, 355, 385, 479, **S. 85**

protected when receiving payment of crossed cheques of customer, 485, 495, 496, **S. 131**

notice of dishonour by county banker, 408 by branch bank, 409

BANKING HOURS—presentment in, 292

BANKRUPT—right of, to sue as indorsee, 116: effect of, on bills, 115, 543

BANKRUPTCY—banker cannot pay cheque after, 162

no excuse for non-presentment, 287

BEARER—

instruments payable to, 224, 248: holder of benami, 59

payment of bills payable to, 326

negotiation of bills payable to, 224, **S. 47**

BENAMIDAR—

if entitled to sue, 59, 326, 541

payee, a benamidar for one of the makers, 59

BENEFICIARY—suit by, 59, 60, 541

BETTER SECURITY—protest for, 419, **S. 100**

BILLS OF EXCHANGE—See BILLS IN SETS

defined, 41, **S. 5**: in Stamp Act, 41, 573: in Limitation Act, 560

form of, 42; when payable to order, 77: non-negotiable, 78

requisites of, 42 to 49: must order payment unconditionally, 42-44: not out of a particular fund, 43: signature of drawer to, 45: payee to be certain, 47: drawee to be named, 45

amount certain, 46: in money only, 47

effects of drawing a bill of exchange, 48: not an assignment of funds, 48

consists of series of different contracts, 501-502

duplicate of lost bills, 211

duties of owners of lost, 212

on demand, when no time specified, 93

negotiation of, 229

to be left with the drawee for acceptance, 284

in sets, 497

payment by, 532-540

foreign or inland, 75

protest of foreign, if necessary, 428—stamp on, 48

BILLS OF EXCHANGE ACT—

sections of the, xxv to lvii

the Time of Noting Act, xliii

Crossed Cheques Act, liii

Amendment Act, 1932, li.

reference to corresponding sections of, lvii-lviii

BILLS IN SETS—what are, 497, **S. 132**: holder of first acquired part entitled to all, 499, **S. 133**: transferee's right to parts in transferor's possession, 497

object of, 497, **S. 133**

acceptance of, where to be written, 498

BLANK INDORSEMENT—

what is, 87, **S. 16**: effect of, 248, **S. 54**.

striking out of, 231

when followed by indorsement in full, 249, **S. 55**

BLANKS—See AMBIGUOUS INSTRUMENTS

in instruments, 94, 98

to be filled up in reasonable time, 98

BONA-FIDES—

inadequacy of consideration as a test of, 66, 70: of banker, 356, 483

BONA-FIDE HOLDER FOR VALUE—

See HOLDER IN DUE COURSE

BONDS—

of foreign countries, when negotiable, 12
definition of, under stamp act, 575

BRANCH BANK—

cheques on, 156
distinct for many purposes, 156
when justified in refusing to honour cheques, 156
whether liable to be sued on dishonour of cheques, 156
right of the banker to combine the accounts of the various, 157
presentment at, 292
notice of dishonour by, 409
payment of drafts on, 364, **S. 85A**

BRITISH INDIA—meaning of, 14

BROKER—

authority of, to pledge, 67
sale through, of negotiable instruments, by Court 551

BURDEN OF PROOF—See ONUS

BUSINESS DAY—

what is, 280 : presentment on a, 280 : presentment for sight, 283

BUSINESS HOUR—presentment in, 291, 292

CALENDAR—computation of maturity by what, 105, 106

CANCELLATION—

by banker of acceptance, 322, 323
by mistake, 323
discharge of parties by, 342, **S. 82 (a)**: to be apparent on the instrument, 343: does not destroy collateral rights, 343 reserving rights at the time of, 341

CAPACITY—

to make, etc., promissory notes, etc., 108, 120, **S. 26**
distinguished from authority, 121
of parties, 108, 120
of drawer implied by acceptance, 164
of payee to indorse, implied by acceptance, 165

CASE OF NEED—See DRAWEE IN CASE OF NEED

CAUSE OF ACTION—See SUITS

indorsement as part of, 173
on non-payment, 150
on refusal to accept, 148
notice of dishonour as a part of, 151
place of delivery as part of a, 217

CERTAIN PERSON—meaning of, 32, 35, 42, 47

CERTAIN SUM—meaning of, 34, 36

CHARGES—Notarial, 416, 455

CHATTELS—See CHOSE IN ACTION

CHEQUE—See CROSSED CHEQUES

defined, 49, **S. 6**: under Stamp Act, 576: if includes, 50, 386: chit requesting payment is not, 44
difference between bill and cheque, 49, 50
evidentiary value of, 50, 159; date of, 51: on Sunday, 51: when no date, 51
form of, 50 : must be drawn on bank, 49 : drawn by banker on himself, 49 : payee and sum to be certain, 51
intended for immediate payment and not for circulation, 50 : payable to bearer, 357 : payable to order, 77
supposed to be drawn on funds, 49 : not an assignment, 52, 159
payment, when countermanded, 161 : payment when undated, 51
post-dated or ante-dated, 51 : by minor post-dated, 111
no acceptance of, 49
marking of, 52
obligation of drawee with funds to honour, 154, **S. 31**
as evidence of loan, when paid, 159
presentment for payment of, 49, 159, 292, 301, 351: when to make, 296 : effect of delay in, 351, 352
payment in due course of, 353, **S. 85**
no days of grace for , 49, 52
drawn on branch bank, 157
liability of drawee of, 154, **S. 31**
payable to bearer exempted from the Currency Act, 15
liability of drawer of, 351 ; for negligence, 155, 360
discharge of, 351, 352
stale, 67, 290, 356
marked, Account payee, 476, 491

CHOSE IN ACTION—

negotiable instruments as, 80
transfer of bills, etc., as, 229, 230
indorsee under invalid indorsement treated as assignee of, 241

CHRISTMAS DAY—is a public holiday, 107, **S. 25**

COHABITATION—consideration of future illicit, 258, past, 258

COLLATERAL SECURITY—

recital of, in note, as to deposit of, 27
indorser entitled to, in payment, 195
indorser discharged by holder, impairing, 195
effect on, by negotiation, 82

COLLECTION—indorsement for, 175

agent for, See AGENT

COMMISSION—for collection of amount, included in the compensation, 456

COMMISSION AGENT—liability when he is also a payee and indorsee of hundi, 201

COMPANIES—capacity of, 117, 118 : bills of, when binding, 119

COMPANIES ACT—VIII of 1913 : companies registered under, 119, 120

COMPENSATION—

by drawee of a cheque to drawer on dishonour, 163: by indorser to holder, 175 : by maker or acceptor, 168 : to indorser, 457
rules for determining, 454-459, **S. 117**
to the holder, 455: includes interest and expenses, 455: also re-exchange, 456 : includes amount paid, 457 : and interest and expenses and re-exchange, 456
drawing bill for the amount of, 458

COMPOSITION—by holder, discharges surety, 187

COMPUTATION OF TIME—See MATURITY

CONDITION—delivery on, 220

precedent, 220, 221, 525 : in a note, 28, 42 ; does not vitiate, if certain to happen, 44

CONDITIONAL ACCEPTANCE—See ACCEPTANCE

CONDITIONAL INDORSEMENT—See INDORSEMENT

effect of, 246 : acceptor to take notice of condition in, 245, 246

CONDITIONAL INSTRUMENTS—instances, 28, 42, 43

CONDITIONAL ORDER—in bill, 42

CONDITIONAL PROMISE—in note, 28

CONSENT—of parties to qualified acceptance, 369 : to alteration, 380

CONSIDERATION—

valuable, 62 : what is, 62 : lien of bank is, 64 : unlawful, 62, 252, 267, **S. 58**: fraudulent, 256: immoral 258: opposed to public policy, 259: opposed to law, 261, 503: illegal in part, 261
can operate only once, 64
adequacy of, 65: inadequacy of, 204: as test of bona fides, 65, 70, 204: of no value, 204
negotiable instruments made, etc., without, 200, **S. 43**
inquiry as to, between whom, 202, 265, 266
absence of, 210 : failure of, 202 : partial absence or failure of money, 206, **S. 44** : when partial absence or failure of, can be shown, 202 : partial failure of, not consisting of money, 209, **S. 45**
liability on original, 227, 228, 282, 382
statement of, not restrictive, 229
presumption as to, 201, 460-464, **S. 118**

CONSIGNMENT—bill drawn against, 404

CONSTRUCTION—of oral notice of dishonour, liberal, 401
of authority of agent, 121, 122, 125 : of power of attorney, 123 : of instruments by agents, 143
of Act by preamble, 10, 11
of illustrations to sections, 236, 237

CONTINGENCY—
promise to pay in note not to depend on, 28 : order to pay bill to depend on, 42 : if certain to happen, does not vitiate bill or note, 44

CONTRIBUTION—among joint makers, 33

CORPORATIONS—capacity of, 108, 116 ; when they trade, 118 : exceeding powers, 117: can convey title by indorsement, 120: cheques of, 120 ; how paid, 158
district boards, 118 : district municipalities, 120
internal management of, 119

COUNTER-CLAIM—See SET OFF

COUNTERMAND—
of payment determines bank's authority to pay, 161 : to be clear, 161 : by telegram, 161
of payment does not excuse non-presentment, 287
of payment excusing absence of notice, 411, 412

COURT OF WARDS—ward under, 109

CREDIT—letter of, what is, 574: stamp on, 603

CROSS ACCEPTANCES—206

CROSSED CHEQUES—
payment of, crossed generally, 478, **S. 126** : crossed specially, 478, **S. 126** : specially more than once, 479, **S. 127** : in due course, 479, **S. 128** : out of due course, 480, **S. 129**
protection of banker in paying, 479, **S. 128**

CROSSING OF CHEQUES—
what is, 478: general, 474: special, 474: after issue, 476: by holder, 477: by drawer, 477:
not an alteration, 477
conversion of general, into special or vice versa, 477 : by banker, 477 : second special, 479
effect of, not negotiable, 482, **S. 130**

CROWN—seizure by, excusing non-presentment, 287

CURRENCY—bill or note must be payable in legal, 33 : may be of any country, 35

CURRENCY NOTE—40

CURRENT ACCOUNT—generally intended to meet cheques, 154, 155, 157

CUSTOM—
of Nattukottai Chetties to indicate firm transactions, 17, 32, 128, 138
saving as to local, 9, 17, 18: relating to hundis, 19, 20
marking of cheque by, 52
of trade, creating new negotiable instrument, 12, 13
requisites of mercantile, 18

CUSTOMER—
who is, 494-495 ; duty of, 155, 361 : negligence of, 155, 361
death, bankruptcy, lunacy, of, as determining authority of banker to pay, 162

DAMAGES—See COMPENSATION

DATE—not essential in a note, 38, 101 : necessary to fix maturity, 101: alteration of, 372
instrument blank as to, 39, 97, 106
presumptions as to, 464

DAYS—See BUSINESS DAY

DAYS OF GRACE—
what are, 102 : for notes and bills, 102, S. 22 : for each instalment, 103, 293 : not for cheques or instruments on demand, 101-102
how calculated, 103 : excluded by contract, 103
interest on, 103

DEATH—
of customer and banker's authority, 162
of partner, surviving partner can draw cheques, 162
of drawer, is no revocation of bill, 54
is no excuse for non-presentment, 287
notice of dishonour by legal representative on, 395: to legal representative, 400

DEBENTURE—payable to bearer, negotiable, 12

DECREE—for execution of document, or indorsement, 549

DEFECTIVE TITLE—
to an instrument, 71: notice of, 71: does not affect holder in due course, 252, 253, 261, 267, 268

DEFENCE—
that one maker is principal and the other surety not allowed, 185, 524
of partial absence or failure of consideration, 209
of a condition in delivery, 220-221
against restrictive indorsee, 238
fraud, unlawful consideration, etc., as, 256

DEFENDANTS—See PARTIES

DELAY—

in presenting for acceptance of bills, 280 : excuse for, 282, 283
in presenting for payment, 294 : excuse for, 321
if due to causes beyond control of holder, 306, **S. 75A**

DELIBERATION—drawee's time for, 284, **S. 63** : bill left with drawee, during period of, 285

DELIVERY—

what is, 218: actual or constructive, 219: what is not, 217: essentials of, 215-216, **S. 46**: by post, 218: assent of both parties essential to, 213
by whom, 212
essential to contracts, 65, 66, 216, 230 : to acceptance, 215, 216 : to indorsement, 84, 85
what is implied by, 85
contract revocable before, 215
subject to condition, 220; as escrow, 220, 525 : for a purpose, 221
of instrument on payment or indemnity in case of loss, 338-341, **S. 81**
effect of, 227-228: negotiation by, without indorsement, 225, 226
to payee is not negotiation, 81
of incomplete instruments, 95, 96
by legal representative without indorsement, 252

DELIVERY ORDER—if negotiable, 12

DEMAND—See ON DEMAND
bills payable on, 92, 100
presentment of bills payable on, 303
maturity of instrument on demand, 269
law as to, governed by law of place of payment, 508, 509

DEMAND DRAFTS—if offends Sec. 26 of the Paper Currency Act, 50
if cheques, 51, 364, **S. 85A**

DEPOSIT RECEIPT—not a negotiable instrument, 12

DESTRUCTION—holder of destroyed bill, 56, 214
presumption as to stamp in case of, 465
relief in case of, 214, 339, 340
of remedies of a surety party discharges him, 187, 195

DHANI—does not mean bearer, but owner, 16

DIRECTORS—of a company, capacity of, 119

DISCHARGE—

of parties from liability distinguished from discharge of bill, 342-343
by cancellation, 343, **S. 82 (a)** : by agreement, 345-347 : by renunciation, 345 : by release, 347, **S. 82 (b)** : by accord and

DISCHARGE—(*Contd.*)
satisfaction, 347 : by receipt of a negotiable instrument of a lesser sum, 539 : by operation of law, 348 : by payment, 348, **S. 82 (c)**
by qualified acceptance, 365, **S. 86**
by alteration, 369, **S. 87** : by allowing drawee more than forty-eight hours, 349, **S. 83** : by failure to present for acceptance, 276, 277 : by failure to present for payment, 289 : by failure to give due notice of dishonour, 396
of bill, when takes place, 386, **S. 90**
does not affect collateral rights, 387
of surety parties by contract with the principal, 187, **S. 39** : of indorser by destruction of his remedy, 187-189, **S. 40** : of drawer of cheque by non-presentment, 350, **S. 84**

DISCOUNTER—who is, 63 : different from pledgee, 63
See NOTICE OF DISHONOUR

DISHONOUR—of cheque, 163, 164
does not bar negotiation, 275
instrument acquired after dishonour, 267, **S. 59**
by non-acceptance, 389-390, **S. 91** : by non-payment, 390, **S. 92** : if drawee incompetent, 390 : if acceptance qualified, 389
compensation payable in case of, rules, 454-455, **S. 117**
arises only on refusal by drawee in need, 452
governed by law of place or payment, 507-508, **S. 135**
protest for non-payment after dishonour by non-acceptance, 427, **S. 103**

DISQUALIFICATION—of capacity to contract, 108, 116
proprietors of estates under, 116

DISSOLUTION OF PARTNERSHIP—
notice of, 134 : authority of parties even after, 240 : suit by parties after, 544
retiring partner when bound after, 134

DISTRICT BOARD—authorised to draw bill, etc., 118

DISTRICT MUNICIPALITIES—bills by, 119-120

DIVIDEND WARRANTS—are negotiable instruments, 12

DONATIO MORTIS CAUSA—of cheques, 162

DONEE—
not a holder in due course, 65, 162 : can sue prior parties but not donor, 65, 201 : can negotiate, 65, 162

DONOR—
liability of, 162, 201 : to donee, 162, 201 : to other parties, 162, 201

DORMANT PARTNER—liability of, 129

DRAFT—is a bill of Exchange, 41
drawn by one Branch Bank on another, 364, **S. 85-A**

DRAWEE—

defined, 52, **S. 7** : must be named in bill, 45 : when not named, 45, 55, 169 : when same as drawer, 55
acceptance by, 45, 53, 169 : by all the drawees, 55, 170 : by some of the drawees, 170, 368 : by partner drawees, 55, 170, 171 : of bills in sets, 56, 57, 474
entitled to production of bill for acceptance, 278
presentment for acceptance to, 278
entitled to forty-eight hours to accept, 278, 285, 349, **S. 83**
entitled to possession of bill for deliberation, 285
when drawee not found after search, 310, 390
joint drawees, 46 : one can accept, 170 : but not in succession, 46
when misnamed or misdescribed, 46 : when fictitious, 46, 319, 390 : when incompetent, 46, 319, 389, 390
on refusal to accept bill, is dishonoured, 389, **S. 91**
presentment for payment to, 286-287 : when dead, to legal representative, 305
right of holder on dishonour by, 148
may make acceptance qualified, 365-366
liability of, 154, **S. 31** : on cheque 184 : bound to honour, 154, 390 : not liable to holder, 48, 152, 171 : liable to drawer of cheque for dishonouring cheque, 156-157, 163
may re-issue bill before maturity, 73, 274-275, 326
payment in due course by, 356

DRAWEE IN CASE OF NEED—

defined, 52, 56 : **S. 7**, presentment to, 56, 452
acceptance by, 172, 426, 453, **S. 116** : bill not dishonoured until dishonoured by, 452, **S. 115**

DRAWER—

defined, 52, **S. 7** : signature to bill necessary, 45 : may be joint, but not alternate, 45
when same as drawee, 55 : when fictitious, 198, 199
when one of the acceptors, notice not necessary, 414
of cheque and drawer of bill, 153, 301
instrument blank as to, 96
death of, bill not revoked, 54
contract of, 150, 151, 153 : in accommodation bills, 152
liability of, 147-154, **S. 30**, 287, 351 : as principal, 181, **S. 37** : varied by contract, 153 : on bill not accepted, 148 : to compensate to holder 153
discharge by non-presentment, 284, 287 : when no notice of dishonour, 151 : by banker paying cheque in due course, 363
presentment excused when no damage to, 316
forgery of the name of, 197, 360
right of recourse of holder to, 149 : no fresh cause of action at maturity, when already dishonoured, 150
suit against, 152, 153

DRAWER—(*Contd.*)
payment by, 328
estoppel against, 470
what law governs the liability of, 503, 504

DRUNKARD—liability as party to negotiable instruments, 114

DUE DILIGENCE—to find maker, etc., for presentment, 297

DUPLICATE—of lost bill, 210, 214, **S. 45-A** : action for, 213

DURESS—bill, etc., executed under, 256

ENDORSEMENT—
See INDORSEMENT

ENEMY—See WAR

EQUITIES—
attaching to the bill, 272 : when holder subject to,272 : set off not an equity on the bill, 272

ESCROW—delivery of instrument as, 85, 220, 524

ESTOPPEL—
against acceptor, from pleading forgery of indorsement, 165, 197 : from denying existence or capacity of drawer or payee, 165, 471 : can deny genuineness of drawer's signature, 165, 471
against acceptor for honour, from denying the original validity, 470
against parties from pleading forgery, 260
against maker of note from denying original validity, 469, 470 **S. 120** : from denying payee's capacity to indorse, 472, **S. 121**
against drawer from denying original validity, 409, 470, 472, **S. 120**
against indorser from denying signature or capacity of prior indorsers, 474, **S. 122**
against principal for act of agent, 134, 143 : against agent, 144

EVIDENCE—See PRESUMPTIONS
of local usage, 17, 24
of notice of dishonour or that defendant could not suffer damage, 415
value of cheque as, 50, 159
mere noting, no evidence of presentment or dishonour, 419
what evidence of notice of protest sufficient, 425, **S. 102**
of dishonour of foreign bills can be proved only by protest, 428, **S. 104**
parol evidence inadmissible to vary bill or note, 523
parol evidence as to indorsements, 526
parol evidence as to condition attached to delivery, 220
special rules of evidence applicable to negotiable instruments, 460-468
unstamped instrument inadmissible in, 593 : when once admitted cannot be excluded, 597
when admissible, as to the identity of payee, 36, 37, 47

EVIDENCE ACT—S. 57 (6), seal of notary, 25
provisions of, applicable to negotiable instrument, 558

EXCHANGE—See RATE OF EXCHANGE

EXCHEQUER BILLS—are negotiable instruments, 12

EXCUSES—See PRESENTMENT : NOTICE OF DISHONOUR

EXECUTION—
what is, under Stamp Act, 583
of instrument by order of Court, 551
negotiable instruments may be taken in, 551

EXECUTOR or ADMINISTRATOR—
as payee, 37 : cheques made by, 159

EXEMPTIONS—
from stamp duties, when transfer by endorsement, 606.

EXPENSES—in presenting, noting and protesting, 455 : of notice of dishonour, 458

EXTENT—
of authority, of agent, 125-128, 143, 144 : of partner, 128-131 : of corporation, 116-120

FARMING COMPANY—not mercantile, 129-130

FICTITIOUS—
meaning of, 198 : acceptance of bill drawn in fictitious name, 198, S. 42
drawee, 46, 319, 390 : drawer, 198, 199 : payee, 199

FINDER—See LOSS OF BILLS

FIRM—See PARTNERSHIP

FORBEARANCE—to sue when discharges surety, 189

FOREIGN INSTRUMENTS—what is, 75, 76, S. 12 : different from inland, 76
generally drawn at usances, 106
bills to be protested, 428, S. 104
form determined by the law of place of making, 76, 507, S. 135
unstamped, 504 : stamps on, 579, 588
law governing liability of maker, etc., of, 500, S. 134

FOREIGN LAWS—
principle of recognition of, 500 : when not enforced, 501
presumption as to, 511, S. 137 : how proved, 102, 511, 512

FORGERY—
conveys no title, 196, 262
of indorsement, 196, 357, 474 : of drawer's name, 197, 492
estoppel against plea of, 264
payment by banker of cheque with indorsement forged or drawer's name forged, 357, 360

FORGERY—(*Contd.*)

acceptor's plea of forgery of drawer's signature, 471 : of indorsement, 196, **S. 41**
indorser cannot set up the forgery of prior indorsement, 474, **S. 122**

FORM—

in which, agent to sign, 137 : in which, legal representative to sign, 145
of notice of dishonour, 399, 404 : of protest, 420
governed by law of place of making them, 503
of notarial act of declaration, 522

FRAUD—

in obtaining instrument, 253, 256, **S. 58** : does not affect holder in due course, 256
shifts onus on holder to prove consideration and good faith, 466

FRAUDULENT PREFERENCE—of creditor, is illegal consideration, 257, 258

FUNDS—

promise to pay out of particular, makes payment conditional, 43
applicable by drawee of cheque, 155
absence of, as excusing, presentment, 316 : notice of dishonour, 412

GAMBLING—bill in respect of transactions, 260

GARNISHEE ORDER—on bank, 156 : effect on payment of cheque, 163

GAZETTE—

notification in, by retiring partner, 134
by Government of public holidays, 107 : to appoint notaries, 513, **S. 138**
publication in, of rules governing notaries, 513, **S. 139**

GENERAL ACCEPTANCE—though specifying a place, 296, 367

GIFT—of bill or note, See DONOR : DONEE

GIVING TIME—

to principal discharges surety parties, 189
when accepting interest in advance amounts to, 190
for deliberation more than forty-eight hours, 349, 350, **S. 83**

GOOD FRIDAY—a public holiday, 107

GOVERNMENT PRO-NOTES—

are pro-notes, 40, 81
indorsement of, 40, 81, 84

GRACE—See DAYS OF GRACE

GROSS NEGLIGENCE—a holder in taking up instrument, 67, 76

GUARANTOR—
stranger indorsing treated as, 86, 242, 243
notice of dishonour to, 393
presentment for payment to charge, 322

GUARDIAN—
liability on note by, 140-142, 547

HALF-NOTES—sending of, not a delivery, 217 : suit on, 325

HINDU JOINT FAMILY—See JOINT HINDU FAMILY

HOLDER—See HOLDER IN DUE COURSE
definition of, 57-61, S. 8
how defective in title, 58-61
must be named in the instrument, 58 ; benamidar as, 59 : must have acquired in a proper manner, 61 : cesti que trust or ward is not, 529 : indorsee for collection is, 60 : of reindorsed bill, 179
person taking an instrument for stranger is not, 70
without indorsement in his favour of bill to order, 229, 230
deriving title from holder in due course, 247, 272
of accommodation bills, 273
of lost bill payable to order, 212
of instruments—lost, 58, 211, 253 : stolen 61, 253, 254 : negotiated in breach of trust, 254 : procured by imposing on persons, 254, 255 : executed under coercion, 256 : obtained by fraud, 256 : acquired after dishonour or maturity, 269 : or after prohibitory order 61
reindorsed to him, 179
of one of a set of bills, 476 : of bill reindorsed to him, 179
pledgee is a, 64, 65, 66, 67
rights of—
to duplicate of lost bill, 202 : to fill up blank instruments 99 : to reserve rights against surety, 187, 190 : to elect to treat ambiguous instruments as bill or note, 88, 89
entitled to payment of the amount due, 72, 326 : to acceptance of all the drawees, 279
recourse to prior parties on dishonour, 178-179, 417 : when for value not affected by failure of consideration between prior parties, 201
when may refuse acceptance by agent, 170
suit by, 541 : against whom, 179 : against drawer, 152 : drawee not liable to, 152 : against drawee of cheque, 355-359 : for the whole sum, though he has lien for small sum, 64 : on the original consideration, 290, 538, 595 : parties in suit by holder, 179
acquiring instrument after maturity has only rights of his transferor, 271-272
with notice of defect gets only the title of his transferor, 71
option of, to treat bill as payable to bearer, 89
under indorsement of Judge, 58 note (b)
when not entitled to recover money, 252-253
when affected by condition in the delivery of instrument, 228

HOLDER—(*Contd.*)
when restrained by an order of court from collecting, 61
when subject to equities, 271-272
may indorse, if to his order, 85, 240
duties of—to give notice of loss of instrument, 211 : to present for payment, in spite of loss, 212, 287 : to present for acceptance, 278 : to exercise due deligence, for presenting, 310 : whether bound to take acceptance for honour, 442 : to accept payment for honour 450
compensation to, 457-458 : may draw bill for 458

HOLDER FOR VALUE—
when can recover, 200
failure of consideration, 208

HOLDER IN DUE COURSE—
defined, 61, **S.** 9 : must have paid consideration, 62 : even after acquisition, 72 : donee is not, 65 : different from holder for value, 72 : must get possession of instrument, 66 : must become party before maturity, 66 : must have no notice of defects, 67, 72 : must not act negligently, 67, 68
of lost bill, 210, 211, **S. 45-A**
of bill under forged indorsement, 71
holder of bills lost after maturity, 216
holder for no value claiming under a, 72, 247, **S. 53**
holder after maturity claiming under a holder in due course, 72, 247, **S. 53**
entitled to recover though drawer or payee is fictitious, 199
not affected—
by notice of defects after acquisition 71 : by unauthorised filling up of blanks, 98
by fictitious nature of the bill 200 : by mala-fides of agent, 124 : by failure of consideration, 202-203, 208 : by conditions in delivery, 222-223 : by dishonour by non-acceptance, 397
of a forged instrument, if protected, 261, 262
liabilities of prior parties to, 178, **S. 36**
protection of, 180-181

HOLIDAY—
bill drawn on, 62
what is public, 107, **S.** 25 : notification by Government of, 107,
when day of maturity is, 107, **S. 25**
excluded in the time for deliberation, 285

HONOUR—
See ACCEPTANCE FOR HONOUR : PAYMENT FOR HONOUR

HOURS—
presentment for acceptance within business, 280
presentment for payment within business or banking hours, 291, **S. 65**
business, 292 : banking, 292

HUNDIS—

acceptance of, oral, 21
what are, 19
saving of local usages as to, 17-18 : customs as to, 19, 20
how different from bill, 21, 22
provisions of the Act when applicable to, 23-24
effect of forgery on, 263
notice of dishonour of, 21, 175, 397, 438
rule as to the size of the paper of, 581
Shah Jog : Jokhmi, 22 : Jawbee, 23 : Nam Jog, 23 : Shah Joghi, 21 : Zickri Chit, 23

HUSBAND AND WIFE—

identified under common law of England, 115 : wife may contract to bind separate property, 115 : husband not liable on wife's contracts, 115

I. O. U.—not a promote, 28

ILLEGAL CONSIDERATION—instruments given for 258, 259, 261 : as to part of the amount, 261

ILLEGALITY—effect of, on holder's rights, 259 : when maker can set up, 472

ILLUSTRATION—to sections, how to construe, 236

IMMATERIAL ALTERATION—See ALTERATION

IMMEDIATE PATIES—who are, 207

IMMORAL CONSIDERATION—instruments for, 258

INCAPACITY—

of parties to instrument, 108-120
of drawer cannot be set up by acceptor, 471 : of payee cannot be set up by maker or acceptor, 471

INCHOATE INSTRUMENTS—

what are, 94, S. 20
must be delivered, 95 : stamped, 95-96
distinguished from ambiguous instruments, 90
blank as to date, 96 : as to drawer, 96 : as to amount, 97 : as to payee, 97
when delivered operates as prima facie authority to holder to complete the instrument, 95, 96, S. 20 : when holder exceeds authority in completing, 98

INCORPORATED COMPANY—

capacity of, to enter into contracts no negotiable instruments, 118-119
when liable on bill or note as party, 119, 120
can pass title, though incapable of contracting, 120
cheques by, 120

INDEMNITY—

in case of loss of bills, etc., 549 : on payment of lost bills, 339, 340 : on giving duplicate of lost bill, 210, 212, 213
in favour of guardians and executors, 132

INDORSEE—

who is, 87, **S. 16** ; for collection, returning bill, 84, 239 : under restrictive indorsement, 238 : under indorsement by one of two payees, 241 : when bankrupt, 115-116
when discharged, 193, **S. 40**
right of, 233
can negotiate, 239
suit by, 541 : as agent of holder, 541
alteration by, 369, **S. 87**

INDORSEMENT—

defined, 82, **S. 15**
meaning of, 83-84, 85 : intention material, 84, 176
form of, 83 : on face or back 84 : in ink or pencil, 83 : on the instrument or a slip, 83 : date of, 84
delivery necessary to complete, 84-85, 173, 215
who can indorse, 85-86 : by agent, 138 : by legal representative, 145 : by deceased person, 147 : in case of joint makers, etc., 241 : by one of joint payees, 241 : by payee, 37, 241 : by partner, 241 : by stranger, 86, 241-243 : by one not a holder, 242 : by decree or order of court, 80, 551
of bills payable to order, 229, 230 : of a blank instrument, 87 : of Government promissory notes, 81, 84 : of promissory notes, 174
kinds of, for collection, 239 : in blank, 87, **S. 16** : payable, to bearer, 248 : **S. 54**
in full, 87, 88, **S. 16** : conditional, 236, 244, 246, inserted by indorser, 244 : precedent or subsequent, 245
restrictive, 236 : sans recourse, 176, 177 : 'to payee' not restrictive, 237
for part of the sum due, 250, 251, **S. 56** : for part and then for balance, 251 : for one of the instalments due, 251
conversion of blank into full indorsement, 230, **S. 49** : effect of, 249, **S. 55**
striking out, 180, 194, 231 : of blank indorsements, 87, 231
negotiation by, 228; **S. 48**
effect of indorsement, 232-238, **S. 50** : on a blank stamped paper, 87, 97 : on collateral securities, 82 ; when in blank, 248 ; when conditional, 246 : when restrictive, 236, 246
effect of re-indorsement, 179
enlarging liability on, 247
forgery of indorsements, 196, 261-262, 452 ; acceptor when bound through indorsement forged, 196
indorsement of payee, acceptor or maker cannot deny, 472,473
presumption, as to date of, 465 ; as to order of, 465

INDORSEMENT—(*Contd.*)

oral agreements relating to indorsements, 523
order of, when material, 26, 97, 243
formal validity governed by the lex loci actus, 506

INDORSER—

who is, 82, **S. 15**
contract of, 174 ; when for accommodation, 185
liabilities of, 172, **S. 35** : dependent on intention, 84 : when indorsing after maturity, 176 : after dishonour, 175, 176 : on reindorsement, 179 : in spite of alteration, 176, 383, **S. 88** : varied by contract, 176, 179 : regulated by law of place of payment, 507
position of, as to non-negotiable bill, 177
rights of : entitled to notice of dishonour, 175 : remedy against prior parties on payment, 457
to compensation, 457 : what amount, 457 : may draw bill for compensation, 458
discharge of,
by holder releasing or destroying his remedies against prior party, 187, 190, 195 : by striking out prior indorsements, 194 : by non-presentment, 287, 289 : by failure to give notice of dishonour, 396, 397 : by payment, 328, 329 : by alteration, 369, **S. 87**
estoppels against, 474, **S. 122** : deny signature or capacity of prior parties, 174, 474, : can deny validity of bill, 474
may exclude liability or make it conditional, 244-247, **S. 52**
may enlarge liability, 247

INDUCEMENT—

to sign without consideration, 206, 210

INFANCY—See MINOR

INLAND INSTRUMENTS—

what is, 75, **S. 11**
difference of, from foreign, 75 **S. 12**

INSANITY—See LUNACY

INSOLVENCY—See BANKRUPTCY

of parties does not excuse non-presentment, 309
when, discharges from liability, 348
presentment for acceptance, payment in case of, 304-305
notice of dishonour in case of, 400
transfer of property to assignee on, 115-116 : transfer by insolvent after, 116
suits on bills, etc., after, 543

INSTALMENT—

days of grace for each, 101
presentment at each, 295
indorsement for one of the instalments, 251

INTEREST—

accepting in advance, is giving time, 190
rate of, when specified, 332-334, **S. 79** : when not specified, 335-338, **S. 80**
runs from date of maturity, 336 : ceases on tender, 334
whether ceases after refusal to deliver bill, 341
oral agreement as to, 335-336
when recoverable in summary procedure, 336
to be paid by indorser or drawer as compensation, 337-338
included in compensation to holder, 455
six per cent., allowed to indorser, 458
alteration in, 375
relief against unconscionable or penal, 334

INTERNATIONAL LAW—See FOREIGN INSTRUMENTS

governing negotiable instruments, 500-512, **Ss. 134-137**
division of the subject, 502
formal validity of contracts, 503 : capacity of parties, 502 : interpretation and rights, 505-507 : legality of consideration, 507 : damages, 484, 507 : procedure, 507 : dishonour and notice, 507

IRREGULARITY OF INSTRUMENTS—cause exciting suspicion, 69

JOINDER—of parties in a suit by holder, 179

JOINT AND SEVERAL NOTE—See PROMISSORY NOTES

form of, 33 : contracts on, 33, 34 : executed by a minor along with an adult, 111
liability of making of, 185 : oral evidence as to, 186, 524

JOINT HINDU FAMILY—

manager, represents family, 131, 132 : implied power to pledge credit, 131, 132 : when minor bound, 132
suits on notes and bills by, 541 : against, 543

JUDGMENT—holder's option to sign, against any of the parties, 179

KHOKHA—20

"KITING"—488

LAW MERCHANT—applicability of—11, 12

LEGAL REPRESENTATIVE—

who is, 144 : powers of, 146 : how to sign, 145 : when personally liable, 132, 144-145, 146, **S. 29**
transfer by, 146 : of instrument induced by deceased, 252, **S. 57** : indorsement and delivery by, 219, 252
suit against, for endorsement, 252
presentment for acceptance or payment to, 304
notice of dishonour by, 395 : notice of dishonour to, 400
suit by, 146, 542 : suit against, 546
entitled to indemnity out of assets, 132

LEGATEE—must get indorsement before suing, 252, 527

LETTER OF CREDIT—

defined under Stamp Act, 574 : stamp for, 605.
incomplete instrument, will operate as, 97

LIABILITY—See MAKER, DRAWER : DRAWEE : DISCHARGE

of parties not affected, by minority or incapacity of one of them, 110-112
of parties governed by what law, 505, 507
of indorser, 173-178, S. 35
dishonour, 175
on getting back the instrument on reindorsement, 179
of the parties to a holder in due course, 178-180, S. 36
of each party as principal to each subsequent party, 181-187, S. 38
of transferor by delivery, 224 : on the original consideration, 227
of debtor giving bill or note for debt, 535 : on original consideration, 535
of parties on original consideration in case of unstamped instruments, 595
of each party on neg. instrument, distinct, 183-184
of party delivering instrument conditionally, 220-221

LIEN—

of holder on neg. instrument, 64, 65 : of pledgee, 64
of banker on the moneys of the customer, 157, 158

LIMITATION ACT (INDIAN)—

provisions of, relating to neg., 560-570
period of, for suits on bill payable at or after sight or on demand, 561-562 : on bills payable at a place, 563 : payable after date, 561 : payable by instalments, 565 : not accompanied by any writing varying time, 564 : on note to be delivered to payee after a certain event, 567 : on note or bill not otherwise provided, 569
on dishonoured bill, 568
by acceptor of an accommodation bill against drawer, 569
under summary procedure, 560 : for leave to appear and defend in, 570
discharge under, 348
time runs against holder from the time of refusal to accept, 568

LIMITED COMPANY—to have its name mentioned in all bills, 120

LOCAL EXTENT—of the Negotiable Instruments Act, 14

LOCAL USAGE—See USAGE : CUSTOM

LOSS OF BILLS, NOTES AND CHEQUES—

when payable to bearer or indorsed in blank, and when payable to order, 211, 251
holder of, does not lose title, 211, 253
holder's right to duplicate of, on indemnity, 211-214, S. 45-A
no excuse for non-presentment or no notice, 287, 292, 418

LOSS OF BILLS, NOTES AND CHEQUES—(*Contd.*)
payment in case of, on indemnity, 339
presumption as to the stamping of, 465
suits in case of, 549
owing to war, 213

LUNACY—of customer, determines banker's authority to pay, 163

LUNATIC—
agreement by, as party to negotiable instrument, 113, 114 : mere unsoundness of mind will not do, 114

MAJORITY ACT—109

MANAGER—
pro-note as manager or agent of an Endowment, 141
pro-note by the, of a charity, 132, 141

MAKER—
defined, 52 : alternative makers, 33
of note to be certain, 33 : may be more than one, 33, 182
when minor, not bound, 110
obligations of, 166
as surety, 166-182
no notice of dishonour necessary to charge, 169
may re-issue note on becoming holder before maturity, 326
liability of, 164-169, 181, 287, **Ss. 32 & 37** : distinguished from liability of acceptor, 166: and that of indorser or drawer, 286: varied by contract, 167
when presentment necessary to charge, 289 : presentment for sight to, 283, 284, **S. 62** : for payment to, 167, 271, 294, 298
governed by what law, 505
payment of note by, not necessary, 327-328
estopped from denying the original validity of instrument, 469-470, **S. 120** : or payee's capacity, 472-473, **S. 121** : can deny genuineness of indorsement, 473

MARGINAL FIGURES—can supply omission, 92 : not part of the bill, 92

MARK—
of illiterate person in place of signature, 32, 83, 121
private, on a bill not an indorsement, 83

MARKING—
effect of, cheques as good, 52, 160 : value of, by custom, 52

MARRIED WOMAN—
incapacity at common law, 115 : as party to negotiable instrument, 115

MARRIED WOMAN'S PROPERTY ACT—116

MATERIAL ALTERATION—
See ALTERATION

MATE'S RECEIPTS—not negotiable, 12

MATURITY—See DAYS OF GRACE
what is, 101, 102, **S. 22**
of instruments, 100-107: payable at sight or on presentment, 101: payable so many months after date or sight, 104-105, **S. 23**: payable so many days after date or sight, 106, 107, **S. 24**: payable on demand, 269
in computation of, day of date excluded, 106, **S. 24**
when falls on a public holiday, 107, **S. 25**
indorsement presumed to be made before, 465

MEMORANDUM ON BILL—
by maker of Note as to date, 102

MERCANTILE USAGE—See USAGE: CUSTOM

MERGER—discharge of liability by, 348

MESSENGER—notice of dishonour through, 402

MINOR—
who is, 109
can be sued, 547
capacity of, 108-113, **S. 26**: acceptance by, 110; when acceptance after majority, 111: as party to neg. instruments, 110-112
liability of
adult executing a bill along with, 111: on bills for the family trade, 131: on bills drawn by the guardian, 131, 132, 141: where he is the sole owner of the business, 131: on original consideration in cases of bill for necessaries, 112, 235: for misrepresentation as to age, 110
rights of, may sue on instrument in his favour as payee, 112: may pass title to transferee, 112: may indorse, 240

MISDESCRIPTION—
of payee or drawee, 47: indorsement by payee or drawee misdescribed, 36, 37, 133

MISTAKE—cancellation by, 323: payment of money under, 331

MONEY—
meaning of, 74: must be the medium of payment, 35: may be of the currency of any country, 35
payment to be made in, 329

MONTH—means calendar month, 125

MORTGAGE—signature as munim, 138

MUNICIPALITY—bills purporting to be made by liability on, 119-120

MUTT—pro-note by head of, 547: suit against, 547

NAMJOG HUNDI—
nature of, 23

NATURALIZATION ACT (1870), 115
NEGLIGENCE—
giving rise to estoppel, 361
of holder in taking instrument, 67, 68 : of a party in signing, 254 : of holder in presenting cheque. 352 : of a customer, 155, 361 : of drawer, 360 : of holder in getting back the instrument presented by him, 323: of holder in addressing notice of dishonour, 402: of a party whose signature is forged, 264-265
of banker for negligently dealing with bill presented for payment, 322-324, **S. 77**
of banker, in paying cheques, 357: in receiving payment, 493-495
NEGOTIABILITY—
by estoppel, 79 80
of instruments payable to A. B., 78
till payment or satisfaction, 178-179, 273-274
restriction of, 79 : ceases after payment for honour, 452
rules for determining, 12, 79
of cheques crossed "not negotiable", 482-483, **S. 130**
NEGOTIABLE INSTRUMENT—
defined, 77, **S. 13** : other than bills, notes and cheques, 479
evidentiary value of a bad, 29, 43
new instruments by law-merchant, 11, 12, 79: includes Govt. pro-notes, 81 : if includes pakka delivery orders, 12
is a chose in action, 80
parties to—
minor, 109 : lunatic, 113, 114 : drunkard, 114 : alien enemy, 114, 115 : married women, 115, 116 : bankrupt, 115-116 : corporation, 116-117
executed by agent, 121 : by partner, 128 : in firm's name, 132 : by decree of court, 548, 549 : under coercion, 256 : by fraud, 256-257
for illegal consideration, 258-260: for no consideration, 200, 201, **S. 43**: for accommodation, 152, 168, 185, 205, 223, 258: for immoral consideration, 260
lost, 253 : stolen, 253
acquired after dishonour or when overdue, 267, **S. 59** : obtained by imposing on persons, 254
effect of indorsing in blank, 248, **S. 54**
negotiable till payment or satisfaction, 273-275
presumption relating to, 460-468, **S. 118** : as to consideration, 461-464
payment of debts by, 533-540
stamp on, 573
transfer of, as a chose in action, 229 : under decree of court, 548
attachment and sale of, 551
NEGOTIABLE INSTRUMENTS ACT (XXVI of 1881)—
local extent, 14, **S. 1 (1)**: object of the Act, 10: relation to English Law, 10 : usages saved by, 17, **S. 1 (1)** : law before the Act, 10, 11
law governing instruments in oriental languages, 19

NEGOTIATION—

defined, 81, **S. 14**
of instruments payable to bearer or indorsed in blank, 81-82, 215, 224, 228, 248 : of instruments payable to order, 81, 215, 228-230 : of incomplete instruments, 223
by indorsement, 229-230, **S. 48**
by delivery, 224-228, **S. 47**
restriction of, in indorsement, 236
by whom, 239-243, **S. 51**
instrument negotiable till payment or satisfaction, 273, 275, **S. 60**

NON-ACCEPTANCE—See ACCEPTANCE

dishonour by, 389-390, **S. 91**

NON-NEGOTIABLE—

instruments recognized by the Act, 78
no notice of dishonour for, 415
indorsement of, 177-178
a person not a party to, cannot sue, 542

NON-PAYMENT—dishonour by, 390-391, **S. 92**

NOTARY-PUBLIC—

defined 25, **S. 3**: appointed by the local Government, 25, 513, **S. 138**: rules as to, 513, 514, **S. 139**, 515-522
noting of dishonour by, 417, **S. 99** : evidence of, 419 : noting and certificate by, 419, **S. 100**
protest by, 419, 421, **S. 100** : protest for better security by, 419, **S. 100**: protest of instruments when notary not available, 421
signature of, 424
demand by, 425, **S. 101**
rules to be issued by the loc. Govt., 513-514, **S. 139**
noting and certificate of dishonour by, 419, **S, 100**

NOTE—See PROMMISSORY-NOTE

NOTICE—

of defective title to holder, 69 : to holder in due course after transfer to him, 71
of agent how far notice to principal, 70
meaning of, 401, 416

NOTICE OF DISHONOUR—

form of, 404, **S. 94** : should state how dishonour took place, 405 : that the party will be held liable, 406 : oral or written, 401
may be sent by messenger, or in person or by post, 402, **S. 94**
mode of giving notice, 398-406, **S. 94** : by messenger, in person or post, 402, **S. 94**
when necessary, 151, 391 : to charge drawer, 152 : to charge indorsers, 175 : to charge parties, 391 : not, to charge maker or acceptor, 169, 391, **S. 93**
reasonable time for giving, 435, 438: **S. 105**. for transmitting, 438,

NOTICE OF DISHONOUR—(*Contd.*)

S. 107

reason of the rule requiring, 392 : under the Hindu or Mahomedan Law, or Indian Mercantile Law, 175, 398 : in case of hundis, 175, 397, 438

is part of the cause of action, 396

when party to be given notice dead, 409, **S. 97**

even in case of accommodation instruments necessary, 392-393

consequence of default of, 392, 396

where to be sent to, 406

time allowed when parties reside in the same place, 437, **S. 106**: when in, different places, 435, **S. 106**: when notice given by agent, 408, 409, **S. 96** or by branch banks, 409, **S. 106**

by whom, **S. 93** : by the holder, 393 : by any party liable on the instrument, 394: by stranger, 395: by agent, 395: by legal representative 395: by acceptor for honour, 409: by party-receiving notice of dishonour, 407, **S. 95**

to whom, **S. 93** : to one of the drawers, 396 : to manager of Hindu family, 396 : to agent, 399 : to indorser, 175 : to legal representative, 400 : to assignee of insolvent, 400 : to a deceased party, 409 : to guarantor, 393 : to transfer or by delivery if necessary, 401

when excused, 410-416 : when dispensed with, 410, **S. 98** : when payment countermanded, 411 : when no damage to party, 412 : when accepting illegal, 412 : when residence of party not found, 412 : when prevented by accident, 413 : when drawer one of the acceptors, 414 : when firm draws on branches, 415 : when note not negotiable, 415 : when payment is promised, 415

onus on the holder to prove notice not necessary, 416

form, etc., of, determined by law of place of payment, 507-510, **S. 135**

NOTICE OF PROTEST—

when necessary, 425-427, **S. 102** : rules as, 426 : when excused, 406, 426

form of, 522 : may be given by notary, 425, **S. 102**

holder in due course not affected by absence of, 426

NOTING—

what is, 417-419, **S. 99** : advantage of, 417 : fees for, 516

form of, 517 : a bill on dishonour, 417 : cheques, 418

option of the holder in, 418

within reasonable time, 399, 418, 431, **S. 105**

when equivalent to protest, 429-430, **S. 104-A**

OFFENCE—instrument obtained by, 252, **S. 58**

ON DEMAND—

meaning of, 30 : different from 'at sight' or 'on presentment', 99, 100 : instrument payable, 93 : maturity of, 269

ON PRESENTMENT—meaning of, 99 : instrument payable, 100 : different from those payable at sight, 100.
must be presented for acceptance, 266-267

ONUS OF PROOF—See PRESUMPTION : CONSIDERATION
in case of alteration, 379
when shifted, 461-462, 466, 468
on holder to prove why notice not necessary, 416

"OR ORDER"—as words of negotiability, 78

ORAL ASSIGNMENT—of pro-note payable to specified person or order, 229

ORDER TO PAY—meaning of, 44 : A. B. in an instrument, negotiable, 79

ORIGIN—of law-merchant from usage adopted by Courts, 13

OVERDUE BILLS—
nature of, 256
can be negotiated, 275
the holder of, has only the rights of transferor, 66, 67, 267, 268, **S. 59**
indorser of, 175
indorsement presumed to be made before overdue, 465
cannot be accepted for honour, 442

PAPER CURRENCY ACT—
not affected by Neg. Instruments Act, 14, **S. 1 (1)**
invalidates instruments payable to bearer on demand, 14-17, 571 ; and bank notes, 40 ; drafts on demand, how affected, 551
provides for indorsement of Gov. pro-notes, 40, 81
provisions of, applicable to Neg. Instruments Act, 571
penalty for issuing such bills, 571

PAROL EVIDENCE—See AGREEMENT : EVIDENCE

PART-PAYMENT—
acceptance of by holder, 329, 330
to be indorsed on the instrument, 251
on account of the amount due, as excusing non-presentment, 308, 312, **S. 76**
discharges party pro tanto, 331

PARTIAL—acceptance, 367

PARTIAL FAILURE—of consideration, 206, **S. 44** : See CONSIDERATION

PARTICULAR FUND—Neg. instrument payable out of, invalid, 43

PARTICULAR PLACE—
note payable at, presentment of, 291
acceptance to pay at, only general acceptance, 367

PARTIES—
to a regular bill, 53
capacity of, 108-121 : governed by law of domicile, 503
of payee cannot be denied by maker or acceptor, 472, 473, **S.** 121
or prior indorser cannot be denied by indorser, 474, **S.** 122
liability of,
to holder, 178
each, to succeeding parties, 183, 184
relationship of, as principal and sureties, 186
who are in immediate relationship, 207, 262
accommodated, not entitled, to recover, 205-206, **S.** 43
notice of honour by, 393, 394

PARTIES TO AN ACTION ON BILL, ETC.—Appendix D
who can be sued, 544-547 : principal undisclosed, 545 : members of joint family, 545 : legal representative, 546 : reversioner, 546 : head of mutt, 547 : minor, 547 : insolvent, 547
who can sue, 541-544 : holder or agent or beneficiary, 541 : member of Hindu family, 542 : legal representative, 542 : purchaser at auction sale, 543 : insolvent, 543 : indorser after paying holder, 544 : when payee is manager of court of wards, 543, 544
joinder of, 179, 549

PARTNER—
liability of, 128 : joint, 133 : of sleeping, 128, 129 : of nominal, or of retiring, 133, 134 : on bills drawn by a partner of firm, 128-134
acceptance of, for the firm, 170
indorsement by, 130, 240, 241
dissolution of effect, 130
in fraud of partnership, 251
payment to, 377
notice of dishonour when a partner draws on firm, 414
suit by, 544

PARTNERSHIP—See Hindu joint family, 131
mercantile, 29, 129 : non-mercantile, 129, 130, 134
bill to be in the name of, 132-133 : and for the purpose of, 129, 130
cheques of, how paid, 158
when liable, 132
transfers of bills on dissolution, 80
dissolution of, See DISSOLUTION

PARTS OF FOREIGN BILLS—See BILLS IN SETS

PASS-BOOK—effect of entry by banker in 160, 161, 265, 362, 494

PAYEE—See BILLS : CHEQUES : PROMISSORY NOTE
alternative, 37, 47, 77, 79
defined, 56-57, **S.** 7 : alternative, 37, 47, 77, 79 : joint, 47 : fictitious, 38, 199
must be certain, 35, 47, 51 : at least indicated though misnamed, 36, or misdescribed, 38

PAYEE—(*Contd.*)

the secretary of society as payee, 37, 47 : drawer or drawee as, 47, 48 : minor as, 111, 112
instrument blank as to the name of, 38, 97
evidence to identify when misnamed or misdescribed, 47
indorsement by, 241
when name in cheque forged, 355, 357
capacity of, cannot be denied by maker or acceptor, 473, **S. 123**
acceptor of bill where payee is drawer, when bound, 198
suit by, 541

PAYER FOR HONOUR—

duties of, 452 : rights of, 451-452, **S. 114** : remedy of when indorsement forged, 452
compensation to, 451-452

PAYING BANK—See BANKER

PAYMENT—

meaning of, 329
out of particular fund invalidates instrument, 43 : dependent on inevitable event,

PAYING BANK—See BANKER

when no time for payment in instrument, payable on demand, 93, **S. 19**
medium of, in cash or currency or any other medium, 329 : or by bill, note or cheque, 329, 533-540
as discharging liability, 325, 342, 348, **S. 82**
premature, effect of, 73, 325, 326
when discharge of bill, 386
by whom, 73, 327-328 : by stranger to bill, 73, 328
to whom, 74, 235 : to holder, 325 : to beneficiary, 326 : to indorser of bill reindorsed, 326 : to partner, 327 : to manager of Hindu family, 327 : to wrong person, 330
when complete, 330
made under mistake, 331
payer entitled to be shown the instrument on, 338 : to be delivered on, 339 : to indemnity on, lost bill, 339
alteration in time and place of, 373 : in the medium of, 375
of cheques received by banker for customers, 483-496, **S. 131**

PAYMENT BY BILLS, NOTES AND CHEQUES, 533-540

effect of, 533, 534
prima facie conditional, 533 : when not conditional, 534
if destroys original debt, 535 : or suspends action, 356
creditor's duties on accepting, 537
effect of, lesser sum towards a larger amount due, 537

PAYMENT for HONOUR—**S. 113**

of bill, 448, 450 : of pro-note, 449
who can make, 449
formalities of, 450 : form of declaration for, 522 : must be preceded by protest or noting, 450